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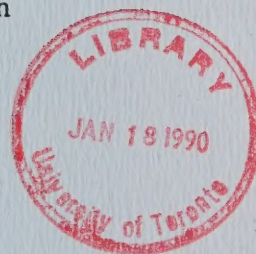
VOLUME: 171

DATE: Wednesday, January 10th, 1990

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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ENVIRONMENTAL ASSESSMENT BOARD

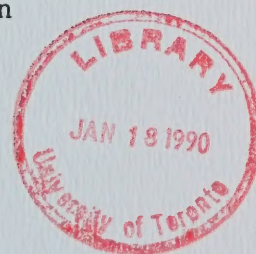
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EA-87-02

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -


IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Wednesday, January 10th,
1990, commencing at 8:30 a.m.

VOLUME 171

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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(iii)

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I N D E X O F P R O C E E D I N G S

<u>Submissions</u>	<u>Page No.</u>
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Witness:

<u>JOHN ALLIN,</u> <u>KENNETH ARMSON,</u> <u>DAVID EULER,</u> <u>ALBERT BISSCHOP,</u> <u>CAM CLARK,</u> <u>JOHN DUNCANSON,</u> Recalled	30418
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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
984	Witness statement for Panel 17.	30412
985	Copy of letter dated January 5, 1990 from C. Blastorah to EAB and all full-time parties re: errata.	30413
985A	Copy of letter dated June 5, 1989 from Kate Murphy.	30420
986	OFAH package of interrogatories re: Panel 17 with covering page.	30413
987	Hard copies of overheads re: evidence of Al Bisschop (Panel 17).	30413
988	Hard copies of overheads re: evidence of John Duncanson (Panel 17).	30414
988A	Table 3 and 4 re: evidence of John Duncanson (Panel 17).	30416
989	Policy No. Af 03.01.01 entitled: Forest Fire Management Policy for Ontario, issued March 8, 1989.	30415
990	Hard copies of overheads re: evidence of Cam Clark (Panel 17).	30415

1 ---Upon commencing at 8:38 a.m.

2 MR. CHAIRMAN: Good morning. Be seated,
3 please.

4 I wonder if this is on?

5 I think while we are waiting for that,
6 Mr. Freidin, we can deal with a couple of logistical
7 matters.

8 We went over some of the dates last night
9 with respect to the statements of issue and the dates
10 for those kinds of things, and it appears to us that
11 the statements of issue with respect to the clearcut
12 witness statement, which is the statement of evidence
13 from Panel 10B, should be in by Wednesday, January the
14 17th.

15 Now, we realize that that doesn't give
16 counsel much time, but bearing in mind that most of you
17 were involved in this clearcut exercise, you should
18 have a certain degree of familiarity with the evidence.
19 The reason we want it in by then is we want to scope
20 this on January 22nd at 5:00 p.m.

21 Now, we are also going to -- well done,
22 Mr. Dadds, well done. We all don't get paid enough to
23 do that kind of thing.

24 With respect to the industry's first
25 panel, we understand that the statements of issue are

1 supposed to be in today and we also want to scope that
2 panel on January 17th at 5:00 p.m.

3 Now, with respect to the industry's Panel
4 2, we are not sure, of course, when we'll reach this
5 and how that will fit in with respect to the break that
6 we are taking in March; but, in any event, we figure
7 that we should get this out of the road in case there
8 are a few days to deal with that panel. So that we are
9 suggesting that the statements of issue be in by
10 February 5th and we will scope Panel 2 on February
11 12th.

12 MR. CASSIDY: Would that again be at five
13 o'clock?

14 THE CHAIRMAN: Yes, yes, we will do that
15 at the end of the day. We think that from now on we'll
16 be holding most scoping sessions at the end of a
17 particular day, probably around five o'clock, and go
18 right through until we finish and then break for the
19 evening.

20 MR. FREIDIN: While we are talking about
21 dates, has any determination been made as to when the
22 March break is going to be?

23 THE CHAIRMAN: Well, we are going to be
24 breaking for two weeks starting I think March the 12th
25 for the two-week period commencing March 12th. That is

1 what is scheduled at the moment. We'll advise you if
2 there are any further changes.

3 MR. CASSIDY: I have a few other minor
4 procedural matters. I don't know if you want to deal
5 with them now or later.

6 THE CHAIRMAN: We might as well, before
7 we start the re-examination.

8 MR. CASSIDY: Since we are mentioning the
9 issue of what is going to happen in February, we are
10 making office arrangements with respect to -- or
11 planning office arrangements with respect to the
12 hearing in Toronto, and it occurs to me, and I'm
13 advised, we may be sitting in your offices on the 12th
14 floor.

15 THE CHAIRMAN: Well, what is happening is
16 this: We have made some very strong representations to
17 the building with respect to the ventilation situation
18 because we understand there were some problems arising
19 out of the session with Dean Baskerville, and they are
20 supposedly correcting that.

21 We are intending to hold the sessions, up
22 until the time when we move back to Thunder Bay for the
23 five panels of the industry's case, at the Board's
24 offices.

25 Subsequent to that, when we move back to

1 Toronto for the remainder of the industry's case and
2 the commencement for Forests for Tomorrow's case
3 followed by the Federation of Ontario Anglers &
4 Hunters, which will put us in Toronto for several
5 months, we will probably seek alternate accomodation in
6 Toronto. But for that short period, it's only going to
7 be a few days, we will attempt to make do with our
8 premises.

9 We have attempted in the short term to
10 find some alternate accommodation. It's very tight,
11 quite frankly, in Toronto in terms of government space,
12 and this hearing, as you can appreciate, is costing a
13 great deal. We are trying to economize where we can
14 and we feel for the limited period of time prior to
15 coming back to Thunder Bay we can all make do with the
16 Board's premises.

17 MR. CASSIDY: Thank you, Mr. Chairman.

18 The other matter I was intending on
19 raising this morning - one of the other matters - was,
20 it occurs to me it may be appropriate for the Board to
21 have - and I put this forward for your consideration -
22 to have a day set aside or a number of days set aside
23 in Thunder Bay for public representations that may wish
24 to be made by members of the public.

25 And I raise that now, given the fact that

1 there may be lag time needed for notices if the Board
2 intends on doing that, but I simply raise that for your
3 consideration.

4 I think that we've been here for a
5 substantial length of time, but I don't think there has
6 been a day set aside to deal with things other than to
7 simply hear members of the public.

8 So I would be interested in your thoughts
9 on that or if the Board has given it consideration.

10 THE CHAIRMAN: Well, we certainly have
11 considered the idea that there should be a couple of
12 days set aside for members of the public who are
13 unrepresented by counsel or who are unassociated with a
14 particular group before the Board.

15 The appropriate time for that would
16 probably be either before we go back to Toronto at the
17 end of the middle panels of your case, so we would
18 consider it possibly at the end of the five panels that
19 you are going to be doing up here.

20 Another place that we could consider
21 doing that is when we hear from NOTOA, who I understand
22 is also going to present their case in Thunder Bay.

23 MR. CASSIDY: Perhaps I was being
24 optimistic, but I was thinking it might be possible to
25 do it before we leave for Toronto and before we start

1 our case; that is, the last week of this month.

2 And perhaps I am being optimistic, but
3 there are three days: January 30th, 31st and February
4 1st. We might conceivably find ourselves finished the
5 clearcut evidence.

6 THE CHAIRMAN: Well, we have the clearcut
7 matter to deal with.

8 MR. CASSIDY: Perhaps I am being
9 optimistic assuming that we can finish that during the
10 week of January 30th.

11 THE CHAIRMAN: Well, I don't know. We
12 also have Mr. Hanna's motion, which I suspect is going
13 to occupy the better part of the day, given the issue
14 involved.

15 I think you are being optimistic. I
16 think we will probably need the time up here before we
17 go back to Toronto.

18 Mr. Colborne, while we are talking about
19 where people are presenting their case, have you given
20 any thought to where you might be presenting your case?

21 MR. COLBORNE: A good deal of thought,
22 but I have no final instructions. I expect it will be
23 Kenora. That is the indication I have been giving to
24 your staff since the beginning.

25 THE CHAIRMAN: Thank you.

1 Mr. Freidin?

2 MR. FREIDIN: Mr. Chairman, let me begin
3 my submissions by making it quite clear that the
4 proponent is not saying that licensing cannot or does
5 not affect the environment, particularly the social and
6 economic environment. It is quite clear that it does.
7 The issue before the Board is to what extent and in
8 what manner can the Board deal with that subject matter
9 in this hearing.

10 The bottom line in terms of the Ministry
11 of Natural Resources' position is that the subject
12 matter of licensing is exempt from application of the
13 Environmental Assessment Act and what we have to do
14 here in the context of this motion is to resolve what
15 the practical consequences of that are for this
16 hearing.

17 If I might, I would like to begin by
18 responding to the submissions of others with a number
19 of points.

20 Firstly, the licensing and the issuance
21 of licences is exempt from the Act. The proponent has
22 defined the undertaking, as is its right in law, and
23 has defined it as the activities of access, harvest,
24 renewal and maintenance. We submit and, in my
25 submission, the Environmental Assessment Branch

1 interpretation supports the proposition that the Act is
2 designed to look at activities, and that really means
3 activities which achieve the purpose, and those
4 activities, using EA jargon, are called methods.

5 And where we are talking about methods -
6 and this goes to a question I think you asked, Mr.
7 Cassidy - in our submission, we say that the methods
8 are physical actions in the forest which are designed
9 to achieve the purpose.

10 THE CHAIRMAN: Are you saying that the
11 activities are methods which are the same thing as the
12 undertaking?

13 MR. FREIDIN: The activities comprise the
14 undertaking, that is correct. The activities --

15 THE CHAIRMAN: The activities are also
16 the methods?

17 MR. FREIDIN: And there are alternative
18 methods of carrying out the activities. If there was
19 only one method, the activity of harvest, if there was
20 only one way of doing it, the activity and the method
21 would be one and the same thing.

22 There are a number of different ways of
23 carrying out the activity of harvest, so I'm just
24 saying I think it's a distinction perhaps that need not
25 be made. The important point is, that what an

1 undertaking consists of are activities, physical
2 actions which must take place in the environment, that
3 is what the Board assesses. There are various ways or
4 methods of carrying out those activities, and those are
5 certainly up for review by the Board.

6 As a consequence of that submission it
7 is, therefore, the position of the Ministry that the
8 activity of granting a licence or the undertaking of
9 granting a licence, which is jargon used in the
10 regulation, is not a method. It is not an alternative
11 method of carrying out one of the activities which
12 constitute the undertaking.

13 Mr. Chairman, I would like to refer you
14 to a very brief passage in the Interim Guidelines on
15 Environmental Assessment Planning and Approvals issued
16 by the Environmental Assessment Branch in July of 1989,
17 and I'm referring - July, 1989 Interim Guidelines
18 issued by the EA Branch - and I am referring to Page 15
19 where the topic of 'alternatives to' and alternative
20 methods are discussed.

21 And I only want to quote one sentence.
22 They are talking about undertakings which are being
23 submitted and it says, and I quote:

24 "Alternative methods of carrying out the
25 undertaking are different ways of doing

1 the same activity."

2 Applying that proposition to the case
3 which is before the Board, the activities we are
4 talking about are access, harvest, renewal and
5 maintenance; and, therefore, 'alternative methods'
6 refers to different ways of doing those same
7 activities.

8 It, therefore, does not include different
9 ways of carrying out licensing. Therefore, licensing
10 and different ways one might go about dealing with
11 licensing, in my respectful submission, Mr. Chairman,
12 cannot become the subject matter of adjudication by
13 this Board on the basis that it is an alternative
14 method.

15 And we'll get into whether in fact there
16 may be some other ways the Board might do it, but I
17 submit to you you can't do it on that basis.

18 THE CHAIRMAN: Okay. Before we go on,
19 can I direct you back to the definition in the
20 Environmental Assessment Act of undertaking?

21 MR. FREIDIN: Yes, sir.

22 THE CHAIRMAN: Section 1(o), where it
23 says:

24 "Undertaking means an enterprise or
25 activity or a proposal, plan or program

1 in respect of an enterprise or
2 activity..." et cetera.

3 MR. FREIDIN: Correct.

4 THE CHAIRMAN: Now, where does your
5 client's undertaking fit with respect to the words, 'a
6 proposal, plan or program in respect of an enterprise
7 or activity'?

8 MR. FREIDIN: It does not. The
9 undertaking is an enterprise or activity. We have
10 defined it as a sequence of activities, as we have
11 already explained. The words in the section then say
12 'or a proposal', it's disjunctive. If we came --

13 THE CHAIRMAN: And you are saying that
14 the undertaking, as you are defining it, does not
15 include a program, proposal or plan for timber
16 mangement comprising the four activities?

17 MR. FREIDIN: That is absolutely correct.
18 The undertaking are the activities which we have
19 defined. We are talking about, and there is discussion
20 in this hearing about a plan, a planning process, but
21 as I have indicated on numerous occasions in the past,
22 the planning process that we are discussing is being
23 discussed because that is always part of the discussion
24 when you are dealing with a Class Environmental
25 Assessment, and it gets imposed as a term and condition

1 of carrying out the undertaking which, in this case,
2 are the four activities.

3 We are not - as I've said before and I've
4 done this before and I said: It's a fine line, but it
5 is an important line to draw - we are not in a legal
6 sense here asking for approval of the planning process,
7 we are not here asking for approval of that plan, if
8 you want to call it that; we are here asking for
9 approval of an undertaking which, according to this
10 definition, are the activities.

11 And we realize that we must, in fact, put
12 forward, in order to get approval for those activities,
13 a reasonable planning process, and that is why we are
14 talking about planning processes because we know that
15 there must be a reasonable planning process in order to
16 get approval to carry out those activities.

17 THE CHAIRMAN: But how would we be able
18 to grant an approval of just the activities outside of
19 the context of a planning process?

20 MR. FREIDIN: I don't understand what you
21 mean by outside the context of the planning process?

22 THE CHAIRMAN: Well, I'm just looking
23 ahead to what the Board's task is. How will the Board
24 when rendering an approval of the undertaking with
25 reference only to the activities, the four activities,

1 without placing those activities within the context of
2 an overall planning process?

3 MR. FREIDIN: Well, with respect, Mr.
4 Chairman, I think you will be putting those activities
5 within the context of a planning process when you say
6 hopefully at the end of the piece: The proponent can
7 carry out and is given approval for the undertaking
8 of - I apologize, Mr. Lindgren - access, harvest,
9 renewal and maintenance, but you must do it and you can
10 only do it subject to the following terms and
11 conditions, many of which outline the planning process
12 which is the context within which you must plan those
13 activities, within which you must tell the public what
14 you are going to do about those activities, within
15 which you give the public an opportunity to tell you
16 what they think about those activities, et cetera.

17 So I think you in fact do that.

18 THE CHAIRMAN: But is not the Board,
19 therefore, approving a program or a planning process
20 which is carried out and implemented by means of the
21 four activities under certain conditions?

22 MR. FREIDIN: No, sir.

23 THE CHAIRMAN: Well, that may be your
24 view of the matter.

25 MR. FREIDIN: May I just have one moment,

1 please?

2 ---Discussion off the record

3 MR. FREIDIN: Is it clear from my
4 submissions, Mr. Chairman, that the Board will be in
5 fact outlining the essential elements of a planning
6 process which must be employed?

7 THE CHAIRMAN: That I thought was the
8 Board's task--

9 MR. FREIDIN: Well, that is one of its
10 tasks.

11 THE CHAIRMAN: --in view of this EA, we
12 will also be reviewing the activities comprising or
13 implementing that planning process, the subject of
14 which that planning process is built around.

15 MR. FREIDIN: You will be doing both of
16 those things.

17 THE CHAIRMAN: Right. And if we find
18 something about harvesting, renewal, et cetera, that
19 doesn't accord with our view, we would be specifying
20 through conditions appropriately how those activities
21 should be manifested or implemented.

22 But I find it personally difficult - and
23 I haven't discussed this in detail with my colleagues -
24 to divorce from the planning process which is the
25 context within which these activities are to be carried

1 out.

2 MR. FREIDIN: And I'm not suggesting you
3 do divorce them in terms of your decision, I was just
4 suggesting that you divorce them for the purposes of
5 answering your question: What is the undertaking in
6 this case.

7 THE CHAIRMAN: Well, why have you defined
8 it in that way?

9 MR. FREIDIN: Because that is the way, in
10 my submission, the Act allows us to do it and the way
11 we do it. For instance -- well...

12 THE CHAIRMAN: I mean, why can't you
13 cover off the four activities within the context of a
14 proposal, plan or program in respect of those
15 activities?

16 I mean, the definition section of
17 undertaking in the Act I would have thought provides
18 specifically for your situation; and I go further, Mr.
19 Freidin, to say that this is essentially one of the
20 only places in this Act under which you can, on a
21 statutory basis, hang the concept of a Class EA.

22 As you are probably aware, Class EA is
23 not mentioned in this Act, per se. It's always been
24 the understanding I think of those who have been
25 involved with Class EAs to the extent that they have -

1 and, I must confess, that this is the first Class EA
2 hearing before the Environmental Assessment Board, so
3 we don't have any more experience I suppose than anyone
4 else - but it's always been my understanding that that
5 was how you justify, on a statutory basis, a Class EA
6 approach.

7 If you are just using activities without
8 reference to a plan or program, et cetera, it's
9 difficult I think to get to the Class EA approach.

10 MR. FREIDIN: Well, Mr. Chairman, if I
11 might, for the purpose of the discussion let's assume
12 that if we had to fall into that last part as well,
13 that 'or' is not necessarily disjunctive, particularly
14 as you have suggested in the context of a Class
15 Environmental Assessment.

16 THE CHAIRMAN: Okay. Let me just
17 continue one second.

18 MR. FREIDIN: Okay, sorry.

19 THE CHAIRMAN: I can see it being
20 disjunctive if the last part, 'the plan or program or
21 proposal', did not include within it the concept of
22 activities as well; in other words, if it didn't follow
23 on to read "...in respect of an enterprise or
24 activity", that clearly goes with the concept of
25 'proposal, plan or program', they are meant to be read

1 together as a phrase.

2 MR. FREIDIN: If we fall into that latter
3 phrase, it would definitely be a proposal.

4 THE CHAIRMAN: Well, a proposal would --

5 MR. FREIDIN: Proposal to carry out - in
6 this case, to continue to carry out these activities in
7 the way we have indicated.

8 THE CHAIRMAN: I'm not sure there is a
9 lot of difference between proposal, plan or program,
10 quite frankly.

11 MR. FREIDIN: There probably isn't and
12 there probably wasn't intended to be.

13 THE CHAIRMAN: Right. So it doesn't
14 matter where you fall on those three words, I suppose.

15 But I really have difficulty if you are
16 trying to restrict it just to activities without any
17 reference to either of the three words 'plan, proposal
18 or program', in respect of those activities, because
19 without doing that I think you've got some difficulty
20 justifying it as a Class EA to start off with; and
21 secondly, I think this whole idea of the four
22 activities can only be put forward in the context of
23 your case under the aegis of some kind of plan or
24 program.

25 MR. FREIDIN: Just following along, I

1 mean, I'm not too sure whether a lot turns on it
2 because I think what we are asking for, when we look at
3 the thorn of the Board's order at the end, is that the
4 Board will be setting out terms and conditions which
5 will set out what the constituent elements must be of a
6 planning process or contained in any planning process
7 which will be used.

8 I think we agree that that is what we are
9 going to get, and in terms of what we are going to get
10 as to what we can actually do in the bush is, we are
11 going to get approval in the end for us to go out into
12 the bush and carry out those activities.

13 THE CHAIRMAN: Which you could do under
14 that latter part of that definition. I mean, that
15 would fit in terms of a Board's approval for this
16 undertaking.

17 I think the Board is going to call upon
18 Ms. Seaborn at some stage, after you have continued on,
19 to give us her views of what the Board has discussed,
20 because this really I think is fundamental to all of us
21 to have some kind of understanding of what is in front
22 of us.

23 And people may find this strange, 20
24 months into the hearing, for the Board to be even
25 enquiring as to what exactly is the undertaking before

1 us, but I must confess that this thing is rather a
2 complex matter and it's one that hasn't really based
3 itself on previous jurisprudence, so we are all
4 charting, I think, new water here to some extent.

5 MR. FREIDIN: I might come back to this,
6 Mr. Chairman, but --

7 THE CHAIRMAN: I'm sure Mr. Bisschop will
8 probably want to confer with you as well at some point,
9 because I just think that your attempt at defining the
10 undertaking as you did initially, Mr. Freidin, is too
11 restrictive in the context of this Class EA.

12 MR. FREIDIN: I will come back to this.
13 I'm not too sure that which way we end up coming down
14 the line is going to affect the --

15 THE CHAIRMAN: It may not affect your
16 arguments.

17 MR. FREIDIN: Yes, but this particular
18 argument in terms of licensing, et cetera, but it
19 certainly -- the discussion we just had is one which I
20 knew we would have one day, and it looks like we are
21 going to have it again.

22 So, continuing with my points, Mr.
23 Chairman, that the granting of a licence or the
24 undertaking of granting a licence is not a method or an
25 alternative method.

1 I support the submission made by Mr.
2 Cassidy in relation to Section 9 of the regulation
3 where he said that if a proponent wants to make the
4 undertaking of licensing an undertaking which is
5 subject to the Environmental Assessment Act, that it
6 has to do something which expressly waives the
7 exemption. We agree that you must expressly waive the
8 exemption, and we submit that we clearly have not done
9 that.

10 Submissions have been made by others, Mr.
11 Lindgren in particular, which suggest that if a
12 proponent submits an undertaking for an environmental
13 assessment which does not expressly include an activity
14 which is exempt, in this case licensing, that the Board
15 can deem or should deem the exemption to be waived
16 simply because the exempted matter, in this case
17 licensing, is somehow related to the undertaking which
18 has been put forward.

19 That, in my submission, is the bottom
20 line of his submission. It is a submission which I
21 urge this Board quite strongly is an unacceptable one.
22 Firstly, in my view, it conflicts with the proposition
23 that choice of the undertaking is a matter of decision
24 for the proponent; and, secondly, let's look at what
25 that really means, let's sort of carry that proposition

1 and look at a couple of examples and see whether it
2 makes sense that that be the case.

3 The subject matter, the activity in the
4 forest of fire protection is exempt by MNR-1. It's
5 exempt from application of the Environment Assessment
6 Act.

7 You will hear in Panel No. 17 that that
8 is an activity which has and can have a substantial
9 effect on the supply of wood to industry. It has an
10 effect on the very purpose of the undertaking. It,
11 therefore, is obviously a subject matter which is
12 related to timber management.

13 Now, does that mean that the Board, in
14 the context of this hearing, can ignore that exemption
15 and impose terms and conditions in relation to how fire
16 protection occur in the forest? I would suggest to you
17 clearly you cannot.

18 THE CHAIRMAN: No, but cannot the Board,
19 if it feels that fire protection in the forest is not
20 being carried out adequately, rather than ordering
21 amendments to the way fire protection is carried out,
22 deny the activity for which you are seeking to carry
23 out within the jurisdiction of the Board?

24 We can deny the activity of harvesting
25 because we don't like the way fire prevention is to be

1 carried out, as opposed to ordering changes to the way
2 fire prevention is being carried out.

3 MR. FREIDIN: Sure, I think you can.

4 THE CHAIRMAN: Because the environmental
5 impact of the way you are carrying out fire prevention
6 doesn't accord with what the Board feels, in terms of
7 the activities for which approval is sought, is
8 adequate.

9
10 MR. FREIDIN: Exactly. Now, the reason I
11 raised this as an example, and there is another
12 example -- well, the reason I raised this as an example
13 is because when I read the statements of issue filed by
14 some of the parties on Panel 17 - and I'm going to get
15 to this later in my submissions - they weren't just
16 saying: We want to call evidence about certain things
17 or question you about certain things, it was the clear
18 import of those statements of issue that they were
19 doing it because they wanted the Board to fashion a
20 remedy which would include or have as an essential
21 ingredient making an order about something which, in my
22 submission, is exempt.

23 THE CHAIRMAN: Well, that is the crux of
24 the whole question before the Board; is it exempt?

25 MR. FREIDIN: That's right. And I'm
submitting that it is, and my submissions are based on

1 that. But that is why I am raising it, and I will
2 indicate later that I am not trying to limit them
3 asking questions and leading evidence about the subject
4 matter which is exempt, I am objecting and trying to
5 make it clear at this point in the hearing that: Let's
6 not do it, and let's not waste time talking about
7 matters which are exempt if the purpose for which you
8 are doing it is to ask this Board to make an order
9 about how that exempt matter should be done. And that
10 is what they are asking for, and I think it's quite
11 clear that is what they are asking for.

12 So, if I might continue. Another
13 example, research and development is exempt from the
14 Environmental Assessment Act. There is all kinds of
15 silvicultural research ongoing. In my submission, the
16 Board cannot, even if it thought it might be beneficial
17 to the environment, make an order that certain research
18 and development in terms of silviculture be done in a
19 certain fashion.

20 And that just leads us down to licensing.
21 Licensing is exempt. Should it be treated in any other
22 way from fire protection and research and development?
23 I say no.

24 Now, what does that really mean. Really
25 what that means, to sort of bring this down to earth

1 and to what we are talking about here, the whole
2 submission sort of arose as a result of submissions
3 that the social and economic environment that native
4 people find themselves in is one which they would like
5 improved, and no one is arguing with that, no one says
6 that is not a desirable end.

7 My submission is that that is being done.
8 That is being addressed in other forums, you heard
9 about that in Panel 6, but that you cannot address or
10 attempt to remedy what might be regarded as an
11 undesirable social and economic condition in the area
12 of the undertaking through imposing terms and
13 conditions in relation to licensing which is exempt, or
14 through fashioning terms and conditions which are
15 beyond the power of the proponent to deliver.

16 MR. MARTEL: Could I ask a question then?

17 MR. FREIDIN: Yes, sir.

18 MR. MARTIN: Are you suggesting that we
19 could not say that, for example, we feel that MNR must
20 negotiate to give those people who live in the forest a
21 better access to the harvest as has been done in some
22 of the mining agreements which were presented before
23 this Board as a means of getting approval?

24 There is an assurance that their
25 considerations, and we saw some of the quotes yesterday

1 that MNR themselves used and the Government of Ontario
2 used, of a favored position for native people, that we
3 don't think that we could order that this should in
4 fact not occur, but that there should be more serious
5 negotiations with the native people.

6 MR. FREIDIN: My submission is that you
7 cannot order as a matter of law, Mr. Martel, the
8 proponent to do that because really, notwithstanding it
9 was done in another situation, this is a legal forum
10 and I respectfully submit to you you couldn't do that
11 in this forum.

12 THE CHAIRMAN: Again, that is on the
13 presumption that licensing and licensing regimes are
14 exempt under Section 9?

15 MR. FREIDIN: That's correct. I guess
16 what I'm saying, Mr. Martel, I mean you talk about it,
17 but what you do is: How do you give effect to your
18 negotiation. Well, you give them licences, in terms of
19 timber management, you give them licences. And I'm
20 saying, for all the reasons I have indicated, that's
21 exempt and the Board doesn't have the legal
22 jurisdiction to impose that requirement.

23 In terms of the second part, and this
24 arises I guess primarily from the statement of issues
25 of Treaty No. 3, an issue:

1 "Why were there no alternatives examined
2 which involved management with more
3 direction to the industry regarding
4 allocation of economic benefit from the
5 forest resource (i.e., contracts and
6 jobs)."

7 Well, we have been through this argument
8 before. The Board can't make a term or condition which
9 imposes or gives direction to industry regarding
10 allocation of economic benefits, contracts and jobs
11 because they are not the proponent. You have no legal
12 opportunity, power to do that. Can you tell the
13 Ministry that we should do it indirectly by making them
14 terms or conditions of licences; no I say. I say no
15 because then you are entering into the field of
16 licensing which we say is exempt.

17 THE CHAIRMAN: So it all hinges really on
18 whether this is an actual exemption or not?

19 MR. FREIDIN: That's correct. And, in my
20 submission, the words couldn't be any clearer, that it
21 is exempted. I will address the submissions made by
22 Ms. Seaborn and others as to whether it's just some
23 after-the-fact kind of regulation.

24 And before I leave this, Mr. Martel --
25 I'm sorry, one moment.

1 We are not suggesting that the subject
2 matter of the social and economic environment is one
3 that is not of concern, it is one of concern. There
4 was extensive evidence led in Panel 6 that things are
5 being done about it. There are tripartite-honoured
6 agreements, there are memorandums of intent with native
7 people where these things are being negotiated. It's
8 just as a matter of law that this is not the forum in
9 which we can in fact resolve those issues.

10 Now, if I might continue.

11 MR. MARTEL: But you will agree that you
12 will attempt to -- you have laid before us a whole pile
13 of material about how various stakeholders are in fact
14 affected by what it is we allow to go on out in the
15 forest. I mean, all of Mr. Clark's information, a
16 substantial amount, reams of material do deal with the
17 socio-economic effects of activities on the stakeholder
18 groups.

19 MR. FREIDIN: That is correct, Mr.
20 Martel, but those are effects which occur as the result
21 of the activities, how the activities actually occur.
22 They are the effects of an action, that is what the Act
23 is about.

24 What you are talking about and what the
25 native situation people would say is that there is an

1 effect of an omission. The omission is that we have
2 not received perhaps enough licences or enough jobs,
3 but we are here talking about the effect of the
4 activities being implemented, not with respect the
5 effects which might flow from who might carry out those
6 activities, because who carries out those activities is
7 something which is determined as a matter of licensing.

8 THE CHAIRMAN: But, Mr. Freidin, isn't it
9 the case that if the definition of the undertaking is a
10 program in respect of an enterprise or activity; i.e.,
11 the four activities, that licensing, as opposed to
12 specific licences, is one of the methods of carrying
13 out that program in respect of those activities?

14 MR. FREIDIN: No, sir, it is not a
15 method as you have defined it. I go back to the
16 guidelines which say that methods and alternative
17 methods are ways of doing the same thing.

18 Now, either we have defined the
19 undertaking as being those activities, and licensing is
20 not a different way of doing the same thing...

21 THE CHAIRMAN: Okay, that is the way you
22 believe you have defined the undertaking.

23 But if the undertaking is defined as a
24 program or a plan of management comprising four
25 activities essentially, then surely licensing is a

1 component of the manner in which those activities are
2 regulated or carried out. Surely licensing as a
3 regime, as opposed to specific licences between
4 specific parties, is one of the tools that is used in
5 order to implement the activities.

6 MR. FREIDIN: First of all, I don't agree
7 that it's a necessary component, but let's assume for
8 the purpose of answering your question that it is.

9 THE CHAIRMAN: Well, whether it's
10 necessary or not is one question, but it's certainly
11 one that the Ministry uses.

12 MR. FREIDIN: But I have some concern
13 when you use the word 'method', but I will accept for
14 the purposes of answering your question that it is a
15 method, it is still clearly a method which is exempt,
16 and I will make submissions later that I do not think
17 it is a valid distinction for the Board to make
18 between, as you did during some questioning of other
19 parties, the granting of a specific licence to somebody
20 and a scheme or framework for licensing. I don't think
21 that is a valid distinction to make.

22 My submission is that if licensing is
23 exempt, licensing is exempt, and that means a framework
24 for a licensing scheme.

25 THE CHAIRMAN: Okay. I agree with you

1 there, that goes back to whether Section 9 read with
2 Section 10 in the context of that regulation provides
3 an exemption. Set that question aside, that is a
4 determination that has to be made, whether that affords
5 you an exemption, okay.

6 MR. FREIDIN: Yes, sir.

7 THE CHAIRMAN: But in the event that it
8 doesn't--

9 MR. FREIDIN: In the event that it
10 doesn't...

11 THE CHAIRMAN: --doesn't afford you an
12 exemption, is not licensing part of the program or plan
13 with which you implement the activities with which you
14 control or carry out the activities? Is it not a
15 scheme which defines, to some extent, how the
16 activities will in fact be carried out?

17 MR. FREIDIN: It is a scheme which
18 controls who carries out the activities, I will agree.

19 THE CHAIRMAN: No, but it controls more
20 than that; it controls area, it controls duration, it
21 controls parties as to who carries it out, it probably
22 controls a lot more if you look towards the social and
23 economic side of the effect of licensing, and obviously
24 social and economic is very much part of the definition
25 of environment.

1 MR. FREIDIN: I have accepted at the
2 outset that licensing has a substantial effect on the
3 social and economic environment.

4 THE CHAIRMAN: Right.

5 MR. FREIDIN: Let me respond this way.
6 As I understand environmental assessment - just the
7 environmental assessment process - you define the
8 purpose and then you determine: What do you have to do
9 to in fact achieve the purpose. And I'm saying that
10 the things that you have to do to achieve the purpose
11 are to carry out those activities, and that is what the
12 Board deals with and not --

13 THE CHAIRMAN: But you don't carry out
14 the activities in the abstract, in a vacuum, you carry
15 out those activities in terms of timber management
16 within the context of a planning scheme or program or
17 proposal and, as part of that planning scheme or
18 proposal, there are things such as licensing, to use
19 one example, that defines the way in which those
20 activities are in fact implemented.

21 MR. FREIDIN: One moment to confer with
22 my expert Mr. Bisschop.

23 ---Discussion off the record

24 MR. FREIDIN: All right. Mr. Chairman, I
25 think I can end this discussion.

1 If you find that licensing is not exempt,
2 if you don't agree with the basic proposition, then I
3 would submit to you that you could deal with the policy
4 of licensing to the same extent as other policies which
5 are related and have an effect on the undertaking.

6 THE CHAIRMAN: Okay. And I think for the
7 first time today we agree totally with you. It boils
8 down--

9 MR. FREIDIN: Oh, good. You mean it took
10 me that long. Hopefully, I can reduce it, Mr.
11 Chairman.

12 THE CHAIRMAN: --to whether or not this
13 exemption applies.

14 MR. FREIDIN: Okay. Now, I understand
15 the Board's concern, you want to know what the effect
16 is if you don't agree with my submissions on how far
17 people can go, and I think I have answered your
18 question.

19 THE CHAIRMAN: Okay.

20 MR. FREIDIN: I would ask you to consider
21 the earlier submissions and hopefully during your
22 deliberations you will agree with me a little earlier
23 on in my submissions, Mr. Chairman.

24 THE CHAIRMAN: Well, we assure you we
25 will consider everything.

1 MR. FREIDIN: Thank you.

2 THE CHAIRMAN: Not just this morning and
3 certainly not just the last two minutes' worth.

4 MR. FREIDIN: Good. Just so we are clear
5 then, the related issue is: Well, what is the effect,
6 therefore, of any policies which are related to --
7 pardon me, I think I have covered this.

8 Now, you heard evidence I think in
9 submissions on earlier occasions that if an activity of
10 timber management is in the opinion of the Board
11 implemented in a manner which leads to unacceptable
12 environmental effects, the Board can say: Don't do
13 that, or do it subject to certain restrictions which we
14 call terms and conditions.

15 And we have made it quite clear that the
16 proponent's position is that to the extent that that
17 might frustrate or make it more onerous to achieve or
18 administer a related policy of government, so be it,
19 nothing we can do about that.

20 But that is different from changing the
21 policy - and now I'm back to saying licensing is
22 exempt - that is different from changing the policy or,
23 in my submission, changing the policy, the licensing
24 policy is what in fact the import of some of the
25 comments made in the statements of issue is and, for

1 all the reasons I have indicated, that is something the
2 Board can't do.

3 Now, Mr. Chairman, I apologize for some
4 repetition, but I want to address the matters that were
5 raised.

6 You raised the hypothetical situation
7 with Ms. Seaborn about whether the Board could impose
8 in effect a new licensing scheme and say once the
9 present licences are up for extension - you were
10 referring to the FMA Evergreen agreements - that that
11 new licensing scheme must be followed or approval to
12 proceed would cease to apply. That is how I understood
13 the question.

14 Ms. Seaborn said: Yes, I think you can
15 do that, Mr. Chairman. And I submit quite clearly that
16 she is wrong, that you cannot do that. You cannot, in
17 my respectful submission, do that, Mr. Chairman,
18 because to do so would be to do indirectly what I would
19 submit you cannot do directly. And I will explain what
20 I mean by that, but you are aware that that is an
21 accepted proposition of law.

22 I say what you can't do directly is you
23 can't go to the Minister of Natural Resources and tell
24 the Minister of Natural Resources to change the
25 government policy in relation to licensing because it's

1 exempt. What you in fact would be doing is you would
2 be saying to the Minister: You can't exercise the
3 discretion which has been given to you by government
4 policy, in this case government policy enunciated not
5 just by Cabinet but by the Legislature, and I submit to
6 you that the Board cannot make that kind of direction.

7 Now, if I can --

8 THE CHAIRMAN: But is not the policy of
9 licensing standing or dependent upon an approval? It
10 can't stand on its own; you can't --

11 MR. FREIDIN: It's not worth anything on
12 its own.

13 THE CHAIRMAN: That's right. I mean, you
14 can issue a licence but it has no force and validity, I
15 would suggest, if there isn't an approval, an
16 environmental approval under this Act.

17 MR. FREIDIN: I agree, it's a useless
18 piece of paper.

19 THE CHAIRMAN: Underpinning it. So that
20 if the Board chooses to limit its approval, why is that
21 fettering the discretion of the Minister to enter into
22 the licence? He could enter into the licence but,
23 unfortunately, nobody can carry out the activities so
24 licensed.

25 MR. FREIDIN: But all you have done is

1 you have backed your way into doing something which you
2 really can't do. You would have been very
3 imaginative...

4 THE CHAIRMAN: No, no, but that is what
5 I'm questioning. We can deal with the approval.

6 MR. FREIDIN: But you can't back into it
7 and design it in a nice way which, in effect, is
8 designed to achieve what you really can't do. That is
9 really what you would be doing.

10 If you accept -- if you did it for the
11 reasons that you suggested to Ms. Seaborn; i.e., to get
12 the Minister to implement a scheme, and that would be
13 the only reason --

14 THE CHAIRMAN: No, no. We would be doing
15 it because not to implement a particular scheme that
16 the Board thought was appropriate would, in the Board's
17 view, render an approval improper -- not improper, but
18 the Board would not have approved the undertaking or
19 allow the undertaking to continue to be so approved if
20 something weren't changed, not because we want to
21 change the licensing scheme, but because we deemed that
22 the environmental impact under the existing licensing
23 scheme is inappropriate.

24 And that, I would suggest to you, Mr.
25 Freidin, is an appropriate exercise of the Board's

1 jurisdiction, and that is apart from the question of
2 whether the licensing regime is exempt in the first
3 place.

4 MR. FREIDIN: Let me think about that
5 one. I think we are going to break at some time before
6 I'm finished.

7 THE CHAIRMAN: So I'm suggesting to you
8 that you may consider it to be imaginative, but I'm
9 suggesting it's not going in the back door where we
10 can't go in the front door; it's exercising our proper
11 jurisdiction.

12 MR. FREIDIN: Okay. On the supposition
13 that you accept the proposition that licensing is
14 exempt, I just repeat an important submission I made
15 before and; that is: Should we pose -- or, pardon me,
16 should we hear extensive evidence regarding possible
17 licensing schemes if the Board agrees that it hasn't
18 got the jurisdiction to change that licensing scheme,
19 and obviously --

20 THE CHAIRMAN: All right. But the
21 question along that line, is: Why has the Board heard
22 extensive evidence on the existing licensing scheme and
23 should not, in your view, hear evidence on alternative
24 licensing schemes?

25 MR. FREIDIN: You have heard evidence

1 about the licensing scheme, firstly as a way of
2 background information. If we went and talked about
3 all these activities --

4 THE CHAIRMAN: No, no, no. You know, you
5 can call this background information, but I think the
6 Board has a lot of difficulty, and it goes back to the
7 this question of what is the undertaking.

8 It may be background because it is not
9 per se one of the four activities, but I would suggest
10 to you, Mr. Freidin, that it is more than just
11 background; when it's taken in the context of a
12 proposal, plan or program, it is part and parcel of
13 that in the respect of the activities, and that is why
14 I think it's more than just semantics to determine
15 where you fit in this undertaking or rather this
16 definition of undertaking under the Act.

17 MR. FREIDIN: It's No. 1 background, and
18 it also is evidence which describes part of the
19 environment within which timber management occurs.
20 We have an obligation to describe the environment and
21 we do that partly by describing that licensing system.

22 Now, just because we do that -- just
23 because we do that does not mean that the Board has an
24 unfettered discretion to change or affect that element
25 of the environment. That is the issue that we are here

1 talking about right now.

2 THE CHAIRMAN: Provided that that also
3 isn't included within (3)(b)(ii)

4 MR. FREIDIN: 5(3)(b)(ii)?

5 THE CHAIRMAN: Right.

6 THE CHAIRMAN: And you have already
7 indicated that you don't feel that it's a method of
8 carrying out the undertaking, and I'm suggesting to you
9 that if you are, under my interpretation of the
10 defintion of undertaking as it applies to this proposal
11 before the Board, then licensing might well be
12 considered under that section.

13 You are indicating, Mr. Freidin, that you
14 have an obligation under the Act to describe the
15 environment; and, therefore, licensing is part of that
16 environment.

17 I'm suggesting to you that if the
18 undertaking is a proposal, plan or program in respect
19 of the four activities, that licensing might be
20 considered to be a method of carrying out that
21 undertaking and, if that is an appropriate
22 interpretation, you have a statutory obligation to
23 discuss licensing, but I'm suggesting that intervenors
24 have the right, in that case, to describe other
25 alternatives to the ones that you put forward.

1 MR. FREIDIN: Accepting all the
2 assumptions built into your comments, yes.

3 THE CHAIRMAN: Presuming of course that
4 the alternatives are reasonable.

5 MR. FREIDIN: Yes.

6 Now, Mr. Chairman, I would like to make
7 some comments about a number of submissions. There
8 were submissions by different parties that referred to
9 the purpose section of the Act and to some of the
10 definitions contained within the Act.

11 THE CHAIRMAN: Well, are we going to deal
12 with this here, or do you want to deal with that with
13 Mr. Hanna's motion?

14 MR. FREIDIN: Oh no, it's got nothing to
15 do with purpose.

16 THE CHAIRMAN: Oh, I am sorry. Okay. I
17 heard the word purpose...

18 MR. FREIDIN: No, people didn't refer in
19 relation to this matter, you recall they referred to
20 Section 2 of the Act which said:

21 "The purpose of the Act is to provide for
22 the betterment of the people of
23 Ontario..." et cetera, and they also
24 referred to the definition of undertaking and
25 particularly environment, and really what they were

1 saying is, the purpose section is very broad. They
2 were saying the definition of environment is very wide,
3 and all-encompassing. And to be quite frank, Mr.
4 Chairman, it was not crystal clear to me what the
5 import of those submissions was intended to be. I was
6 waiting for the other shoe to fall and I never heard it
7 fall.

8 But, as I read their intent, they were
9 saying or they might have been saying - and I'm
10 concerned about this, if I'm right - that because the
11 purpose section is wide and because the definition of
12 the environment is wide and all-encompassing, that
13 somehow one can make a leap of faith and say, as a
14 result, the Board surely must have a very wide and
15 unfettered discretion to in fact fashion
16 recommendations to deal with any problem it sees or
17 perceives in relation to that very wide defined
18 environment.

19 Now, if that was their intent or it is
20 the inclination of the Board to conclude that it does
21 have these wide powers to fashion remedies because of
22 the wide definition of 'purpose' and 'environment', I
23 just want to make sure that I go on record on behalf of
24 my client and say that that would be an improper
25 linkage, that that would be an improper conclusion to

1 come to.

2 And, in my submission, Mr. Chairman, the
3 Board must look elsewhere within the Act to determine,
4 and look to other law to determine the scope or the
5 parameters within which it must remain in fashioning
6 its remedies.

7 THE CHAIRMAN: Well, I would suggest that
8 the Board would look to Section 12(2)(d) and (e) and;
9 that is:

10 "The Board has the power to decide
11 whether there shall be an approval to
12 proceed with the undertaking in respect
13 of which the environmental assessment was
14 submitted and whether or not that
15 approval should be given subject to terms
16 and conditions."

17 There is nothing that appears to fetter
18 the Board's power to impose conditions with respect to
19 the undertaking. And you go back to what is the
20 undertaking, and if the undertaking is a plan, program
21 or proposal in relation to the four activities, then I
22 would suggest to you the Board's power to impose
23 conditions in relation to that undertaking is quite
24 wide or broad.

25 It's not underpinning that on the

4
1 definition necessarily of the purpose section of the
2 Act or the definition of environment, it's relating it
3 to the undertaking which itself may be fairly broad.

4 MR. FREIDIN: Right. But still the terms
5 and conditions have to relate to the undertaking,
6 whether you define it my way or whether you define it
7 your way.

8 THE CHAIRMAN: That's right.

9 MR. FREIDIN: Okay. We agree.

10 THE CHAIRMAN: However, if you define it
11 my way, then it could include conditions relating to
12 licensing; if you define it your way and the exemption
13 applies, that may not be the case.

14 But in either event you are not
15 necessarily going back to giving a framework to the
16 Board's powers, the breadth of the Board's powers to
17 impose conditions and relating that solely to the
18 purpose of the Act.

19 Having said all that, the Board has to
20 take into account the purpose of the Act.

21 MR. FREIDIN: And let me make this
22 submission. Whether we define the undertaking the way
23 I indicated originally or we do it your way, that does
24 not detract in the submission that I made earlier when
25 I agreed with Mr. Cassidy that, if we are correct, that

1 there is an exemption for licensing, it's an exemption
2 which applies regardless of how you define the
3 undertaking.

4 THE CHAIRMAN: As far as whether or not
5 the exemption applies.

6 MR. FREIDIN: I'm just saying if it
7 applies, it applies whether you take my definition of
8 undertaking or whether we accept your definition of
9 undertaking. It doesn't make any difference.

10 THE CHAIRMAN: I'm not going to agree
11 with you quite yet.

12 MR. FREIDIN: Well, that is my
13 submission, Mr. Chairman.

14 THE CHAIRMAN: Okay.

15 MR. FREIDIN: Now, along the same lines,
16 and again this is all premised on my interpretation of
17 what environmental assessment is --

18 THE CHAIRMAN: With one caveat, now that
19 I think about it, Mr. Freidin.

20 MR. FREIDIN: One caveat to my
21 submission?

22 THE CHAIRMAN: No, one caveat to what I'm
23 going to or what I have already said; and, that is, if
24 the Board feels that the impacts resulting from a
25 licensing scheme are detrimental to the environment, no

1 matter which way you define the undertaking, the Board
2 could fashion its approval of the undertaking in light
3 of those impacts.

4 MR. FREIDIN: I'm not sure whether I can
5 answer that without having a better understanding of
6 what you have got in your mind in terms of...

7 THE CHAIRMAN: Even if licensing is
8 exempt, the Board could deny approval because it does
9 not feel that the impacts resulting from the licensing
10 are environmentally sound.

11 MR. FREIDIN: Well, let's talk about what
12 we are talking about here. If you thought that the
13 social and economic environment of native people - and
14 let's get down to brass tacks here - was...

15 THE CHAIRMAN: Through the licensing
16 scheme.

17 MR. FREIDIN: Through the licensing
18 scheme was not quite as acceptable as you would like to
19 see it --

20 THE CHAIRMAN: In the trade-off situation
21 as an environmental impact, meaning one part of the
22 total environment, as measured against other sides of
23 that same question; in other words the, say,
24 detrimental impact to native communities -- just a
25 minute.

1 MR. FREIDIN: All right.

2 THE CHAIRMAN: Just a minute - and this
3 is all hypothetical, it's not based on evidence or
4 anything else - but if there was a detrimental impact
5 to native communities as a result of the licensing
6 scheme, that has to be balanced against maybe a
7 positive economic impact as a result of the licensing
8 scheme, and the Board has to weigh that. And if it at
9 the end of the day decides that on balance the impacts
10 are either detrimental or non-detrimental, it would
11 fashion its approval in that light.

12 MR. FREIDIN: I disagree, because if you
13 do you that you are then having an assessment, you are
14 assessing the positive and negative impacts of
15 something other than the undertaking. If you agree,
16 and you did for the purposes of your submission, that
17 licensing schemes were exempt and you --

18 THE CHAIRMAN: No, no, no. That is going
19 back to the exemption question. I'm assuming that
20 licensing schemes, for the purpose of my submissions to
21 you right now, are part of the plan or program and may
22 not be exempt.

23 MR. FREIDIN: Sure. Oh sure. In that
24 case, sure, in that case you look at it.

25 THE CHAIRMAN: And you weigh it.

1 MR. FREIDIN: Sure.

2 THE CHAIRMAN: And if you come out at the
3 end of the day saying that it is a detrimental impact
4 that cannot support an approval, the approval is
5 denied, or if it can be mitigated through a condition
6 of approval, you impose the condition.

7 MR. FREIDIN: I think that is fair, but
8 let me go back and ask you to think about the
9 submissions I made just before we got into that
10 discussion; and, that is, the law is that licensing is
11 exempt and that --

12 THE CHAIRMAN: Your interpretation of the
13 law--

14 MR. FREIDIN: My interpretation of the
15 law.

16 THE CHAIRMAN: --is that licensing is
17 exempt.

18 MR. FREIDIN: That's right. And that
19 that proposition of law, in my respectful submission,
20 applies however you define the undertaking, and we'll
21 get to it, of course, my interpretation of the law that
22 there is an exemption is based on clear wording and
23 that we have not expressly waived that exemption.

24 Now, accepting the submissions that I
25 have made to this point, Mr. Chairman, to address the

1 concern or a concern that the Board might have
2 regarding the socio-economic environment, and I'm going
3 to use the native situation as an example, to address a
4 concern about that socio-economic environment by
5 imposing terms and conditions regarding licensing or
6 which really change or -- all right, would really
7 change the environmental assessment here into an
8 environmental assessment, in my respectful submission,
9 not of timber mangement but rather an environmental
10 assessment of the social and economic environment in
11 the area of the undertaking. Now --

12 THE CHAIRMAN: But why is that not
13 properly within--

14 MR. FREIDIN: Because...

15 THE CHAIRMAN: --and under the Act?

16 MR. FREIDIN: All right. It is not, in
17 my respectful submission, within the purview of the Act
18 because if it was it would only be within the purview
19 of the Act if the purpose of the Act, if you look at
20 Section 2, is interpreted as a direction somehow to the
21 Board that optimization or optimizing the mix of
22 benefits from an undertaking and any matters related to
23 the undertaking is what must be created or fashioned by
24 the Board by way of its order.

25 In my submission, the Board in

1 environmental assessment is not intended to create out
2 of the environment within which the undertaking occurs
3 a restructuring of that environment so that it is a
4 better mix or a more optimum mix of benefits as seen by
5 the Board, and I'll tell you why I say that.

6 THE CHAIRMAN: Well, just stopping right
7 there. If the Board came to the conclusion at the end
8 of all the evidence that the proposal before the Board,
9 the undertaking, did not provide for the betterment of
10 the people, the protection, conservation or wise
11 management in Ontario of the environment, how could the
12 Board approve it?

13 MR. FREIDIN: It couldn't, or it
14 shouldn't, I suppose. But how do you go about making
15 the decision, how do you go about making that
16 determination. If I might continue, I think what I'm
17 getting at may become clear.

18 The purpose of the Act, in my submission,
19 or what the Act contemplates the Board doing is to
20 examine the undertaking, to weigh the positive and
21 negative benefits of the undertaking.

22 THE CHAIRMAN: In the light of what?

23 MR. FREIDIN: Well, within the
24 environment which it exists as described.

25 THE CHAIRMAN: But in the light of

1 Section 2?

2 MR. FREIDIN: Well, it's not in light of
3 Section 2. Let me continue, and if I haven't answered
4 your question, we'll get back at it.

5 The purpose is to weigh the positive and
6 negative benefits of the undertaking, in this case, as
7 I've described it, the activities, on the environment
8 as you described it as you are required to do under
9 Section 5. And if the Board determines that with or
10 without terms and conditions regarding those activities
11 the balance which you end up with on positive and minus
12 is acceptable and, in my submission, you approve the
13 undertaking.

14 Now, it's my submission that if the Act
15 contemplated that it was the job or the function of the
16 Board to create the best mix of benefits for the
17 environment, then if the Board determined that there
18 was some alternative to the undertaking which was more
19 desireable for the environment, something which would
20 create a better mix, in my submission, the Legislature
21 would have empowered the Board to do just that.

22 In other words, the Act has been
23 interpreted by the courts, Mr. Chairman, and the courts
24 have said the Board does not have the power or the
25 jurisdiction to do that and, in my submission, the

1 conclusion one reaches is, therefore, that that cannot
2 be what the Act contemplated the Board doing within the
3 context of the environmental assessment hearing.

4 THE CHAIRMAN: I think I can save you the
5 trouble of going too far because the Board has held
6 itself on several occasions that you are not
7 necessarily after the best environmental solution, but
8 one that on balance is acceptable.

9 And I would suggest that when you read
10 that in the light of Section 2 as well, Section 2 isn't
11 indicating that the purpose of the Act is to provide
12 the best for the people of Ontario, but that it
13 provides on balance something that contributes to the
14 betterment, which may be lower in scale than best, and
15 it must be something that at least protects, conserves
16 or provides for the wise management in Ontario of the
17 environment. And that, I would suggest to you, also
18 doesn't mean the "best solution".

19 MR. FREIDIN: And you come to that
20 conclusion, in my submission, by considering the mix,
21 the effects of the undertaking.

22 THE CHAIRMAN: Right, but the converse of
23 what I've just said wouldn't apply; meaning, if you
24 came up at the end of the day with something that does
25 not provide for an adequate degree of protection,

1 conservation or wise management and does not contribute
2 to the betterment of the people, the Board should not
3 be approving it.

4 MR. FREIDIN: Right. And what you assess
5 in coming to that determination is the undertaking, and
6 if the proponent, as you have agreed -- well...

7 And if the proponent has defined the
8 undertaking to be certain activities, it is the effects
9 of those activities and the positive and minus of those
10 activities that you look at in terms of making that
11 determination.

12 And if I might be clearer, and you do not
13 look at the effects, positive and minus, of related
14 activities in making that determination even if they
15 are not exempt, but particularly when they are.

16 THE CHAIRMAN: Depends how closely
17 related, I suppose.

18 MR. FREIDIN: Well, you have my
19 submissions about whether the fact that something is
20 related or not gives the Board jurisdiction to, in
21 fact, impose terms and conditions in relation to that,
22 notwithstanding that they are not part of the
23 undertaking.

24 If I could have one moment to organize my
25 less than clear notes.

1 ---Discussion off the record

2 MR. FREIDIN: I want to make some
3 submissions, Mr. Chairman, in relation to comments made
4 or submissions made by Ms. Seaborn regarding Section
5 6(1) of the Environmental Assessment Act. Now, Section
6 6 --

7 THE CHAIRMAN: Do you happen to have an
8 extra copy of the Act handy?

9 MR. FREIDIN: (handed)

10 THE CHAIRMAN: Thank you.

11 MR. FREIDIN: Before we - perhaps you
12 should also have the regulation 205/87 in front of you
13 as well, Mr. Chairman.

14 Ms. Seaborn's submissions in relation to
15 Section 9 of the regulation included the proposition
16 that it is a simple regulation - those were her words,
17 it was simple - and that it only contemplates what
18 occurred after an approval to proceed; that is, that
19 after an approval to proceed the proponent, or anyone
20 else I would assume for that matter, can issue required
21 licences without a new environmental assessment being
22 entered into in relation to the issuance of that
23 licence.

24 She went on and then referred to Section
25 6(1) of the Environmental Assessment Act and she said

1 that the interpretation that she gave to Section 9 of
2 the regulation was fortified - were her words - by
3 Section 6(1) of the Act.

4 My submission, Mr. Chairman, is that
5 based on statutory interpretation the effect of Section
6 6(1) of the Act is just the opposite, that it does not
7 fortify her submission, in fact it lessens the weight
8 that you should give to it.

9 Why do I say that? Section 6, and if I
10 might paraphrase, it says that:

11 "Where a proponent is required under this
12 Act to submit to the Minister of
13 an environmental assessment of an
14 undertaking a licence required under any
15 statute in order to proceed with the
16 undertaking, the licence shall not be
17 issued or granted until you have received
18 approval to proceed."

19 Now, in my respectful submission, Mr.
20 Chairman, when you have a section like that which says
21 you can't issue a licence until somebody gets an order
22 to proceed, the reasonable result of that is if you get
23 an approval to proceed you can issue the licence. You
24 don't need some other wording or statute or regulation
25 to say: Ah, but when you issue that regulation you get

1 into some restriction that you have to overcome.

2 The section says you need a licence, but
3 you can't issue it until you get the approval. And I
4 say statutory interpretation, or reasonable statutory
5 interpretation is: If you get the approval you don't
6 need anything else to issue the licence; you got the
7 approval under the section, you issue the licence.

8 Now, what does that mean about -- what
9 effect does that have on Section 9 of the regulation?
10 In my submission it means that Section 9 of the
11 regulation has got to have a different purpose, it has
12 to mean something different.

13 So you ask yourself the question: Well,
14 what does that mean? And, in my submission, firstly,
15 it means that it's not what Ms. Seaborn suggested to
16 you that it is. I suggest to you that it is not a mere
17 simple after-the-fact situation, but rather it is a
18 regulation which is meant to apply before the fact;
19 i.e., before you get an approval, and that it is
20 intended, therefore, to address or delineate whether
21 licence issues are properly the subject matter of an
22 environmental assessment, whether licensings are
23 reviewable within environmental assessment reviews.

24 And I go back then to Section 9 of the
25 regulation and, if my interpretation is correct, the

1 words are clear and they are unambiguous. They say
2 that the undertaking of making, in this case a licence,
3 doing all those other things as well, are exempt from
4 the provisions of Section 5(1) of the Act.

5 So I go back and I just refer you back to
6 the interpretation of that section by the Environmental
7 Assessment Branch and, in my submission, it supports
8 what I have just said. The interpretation was that the
9 Act was not intended to deal with licensing; the
10 purpose of the Act was to deal with the activities
11 which are facilitated by the licence.

12 Mr. Chairman, I find in my submission
13 additional support for my proposition that Section 9 of
14 the regulation is something different than just a
15 simple after-the-fact provision by Section 10 of the
16 regulation.

17 In my respectful submission - and this
18 really is in agreement with the submissions made to you
19 yesterday by Mr. Cassidy - Section 10 contemplates the
20 possibility that a proponent may believe that the
21 undertaking of granting a licence may be such that the
22 exemption should be waived and that the undertaking of
23 granting that licence be subject to an environmental
24 assessment.

25 That is my reading of it and, my

1 submission, if that is the correct interpretation, then
2 it is inconsistent in my view to say that if that is
3 what is contemplated, Section 9 then obviously only
4 deals with simple after-the-fact matters as submitted
5 by Ms. Seaborn.

6 If the issuance of a licence can be
7 something which a proponent might waive an exemption
8 for because an environmental assessment is required or
9 is deemed to be advisable, I submit to you with respect
10 that you don't do those sorts of things at
11 environmental assessments in relation to simple
12 after-the-fact matters. They must be matters of some
13 import, and it's because they are matters of some
14 import, Mr. Chairman, and they were not simple
15 after-the-fact matters -- well, those are my
16 submissions on that.

17 THE CHAIRMAN: And you are contending
18 that your putting into evidence aspects of the
19 licensing regime was not done by the proponent for the
20 purpose of assessing their impact?

21 MR. FREIDIN: Absolutely not. You are
22 absolutely correct, it was not done for that purpose.

23 THE CHAIRMAN: And, therefore, it can't
24 in any way be constituted a waiver by you under Section
25 10?

1 MR. FREIDIN: It cannot.

2 Mr. Chairman, if I might, just before I
3 end I think dealing with the submissions of Ms.
4 Seaborn, deal with the submissions she made in relation
5 to the Notice of Motion or the wording or specific
6 wording in some paragraphs of the Notice of Motion.

7 She made the submission in relation to
8 Item No. 1, whether privately owned forests constitute
9 an alternative to the undertaking, and that was a
10 matter which is a question of evidence and there could
11 be evidence in relation to that.

12 In my submission I don't agree.
13 Privately owned forests obviously wouldn't be Crown
14 land. As I understand the law, an alternative to the
15 undertaking must be something within the power of the
16 the proponent to deliver, and timber management on
17 privately owned forests would not be an alternative
18 which would be within the power of the proponent to
19 deliver.

20 THE CHAIRMAN: Well, I must admit, Mr.
21 Freidin, I'm not sure that that proposition can be
22 totally sustained. When you are canvassing, for
23 instance, an alternative to say energy production, you
24 would often bring in as an alternative to the
25 undertaking, if it's a gas pipeline, you might bring in

1 a hydro generating station as an alternative method of
2 energy production.

3 Now, the proponent before the Board might
4 be a pipeline company or, alternatively, a hydro
5 utility which is unlicensed and cannot deliver upon the
6 other alternative, but if it is a reasonable
7 alternative and the Board feels that, to use an
8 example, somebody wants to build a pipeline for natural
9 gas transportation or something and the alternative to
10 that is a hydro generating station to provide the
11 energy.

12 MR. FREIDIN: That is something that
13 somebody else would have to do.

14 THE CHAIRMAN: That somebody else would
15 have to do in which the proponent is unlicensed and
16 cannot at law carry out or implement, you would look at
17 the alternative in terms of the assessment, you would
18 not of course grant an approval by ordering - and an
19 approval never does that - for the pipeline utility to
20 carry out and implement the other form of energy
21 production, but I would suggest to you it is totally
22 proper for the Board to canvass those alternatives in
23 arriving at the decision as to whether or not to deny
24 approval or grant approval.

25 MR. FREIDIN: First of all, I will

1 respond by saying: Yes, you could look at those other
2 things as alternatives, you couldn't order, and the
3 main reason for making the submission in the first
4 place is because I'm concerned about jurisdiction of
5 the Board in terms of what orders you can make.

6 THE CHAIRMAN: No, the Board wouldn't be
7 ordering it.

8 MR. FREIDIN: Okay.

9 THE CHAIRMAN: The Board would be denying
10 approval for you to carry out the activities because,
11 in this case, it felt that wood production on privately
12 owned forests, for example, was adequate to the point
13 that the harvesting on Crown land should be reduced,
14 just to use an example.

15 MR. FREIDIN: Sure. You might want to
16 look at that. I suppose you could look at that. I
17 would make some submissions about not having any
18 control over that, as to whether the wood would get
19 supplied to the Ministry, but --

20 THE CHAIRMAN: We are just using it as an
21 example.

22 MR. FREIDIN: Sure. But as I indicated,
23 I raised the matter. First of all, I wanted to make
24 the submission and hopefully have the Board agree that
25 it does not have the jurisdiction to order the

1 proponent to somehow create more privately -- that
2 there should be private forests and that was really the
3 basis for making the submission, not that you can't
4 consider it in the fashion that you have indicated.

5 In relation to 2 and 3, I think that both
6 of those submissions which deal with size, length of
7 terms of licences get covered by the submissions I have
8 just made to you up to this point, and I have no
9 submissions with Ms. Seaborn's submissions on 4 and 5
10 because she had no particular disagreement with them.

11 Mr. Chairman, before I suggest that we
12 have a break, I would just like to go back just for a
13 moment to Section 10 of the regulation, take you back
14 to my submission and the submission of Mr. Cassidy that
15 Section 10 contemplates a situation where a proponent
16 decides that it would like to waive an exemption and
17 have an environmental assessment in relation to the
18 undertaking of granting a licence. That is what it
19 contemplates.

20 THE CHAIRMAN: God knows why any
21 proponent would voluntarily want to have an
22 environmental assessment of anything.

23 MR. FREIDIN: Well, there are situations,
24 Mr. Chairman, where notwithstanding your comment
25 proponents have done just that.

1 There are also situations, Mr. Chairman,
2 where the Ministry of the Environment may want to
3 designate something which is exempt, leaving aside
4 licensing, but something which is exempt to be for a
5 particular purpose subject to the Act, and that has
6 happened as well.

7 So with that lead-in in mind, refreshing
8 your memory as to the interpretation that Mr. Cassidy
9 and I attribute to Section 10, I want to read the
10 section. But before I do, I want to direct your
11 attention to the last two lines of Section 10 which Mr.
12 Lindgren did not read to you when he quoted the
13 section, and the words were:

14 "All provisions of the Act apply in
15 respect of that undertaking."

16 And I want to now go back and read that
17 paragraph and in the place of 'undertaking' I'm going
18 to insert the words 'the granting of a licence' which
19 is defined as an undertaking in the first paragraph,
20 the paragraph above, and it would read:

21 "Notwithstanding any provisions of this
22 regulation exempting the granting of
23 a licence from the provisions of the Act,
24 where an environmental assessment of the
25 granting of a licence is submitted, all

1 provisions of the Act apply in respect of
2 that undertaking (i.e., the undertaking
3 of granting a licence)."

4 In my submission, that is the reasonable
5 way to read that section. If you agree with me it
6 supports the submission made by Mr. Cassidy, which I
7 support wholeheartedly, and it does not support the
8 submission made by Mr. Lindgren because you submit an
9 environmental assessment in relation to an
10 undertaking - in this case the undertaking of timber
11 management - all related and underlying policies are
12 also up for review in that environmental assessment.

13 I submit to you the section clearly says
14 that is not the case. You've got my submissions on why
15 that is so. You can only do that by an express waiver
16 and we have not expressly waived that exemption.

17 THE CHAIRMAN: Okay. Just going back to
18 that submission. How do you know that the word
19 'undertaking' in the second line of Section 10 and the
20 fourth line of Section 10 refer to the same
21 undertaking?

22 And when you relate that back to Section
23 6, Section 6 doesn't talk about all of the things that
24 are mentioned in Section 9 of the regulation.

25 MR. FREIDIN: I'm sorry, Mr. Chairman,

1 could you just go over that again for me?

2 THE CHAIRMAN: Okay. If you go back to
3 Section 6(1)(a) of the Act.

4 MR. FREIDIN: Yes, sir.

5 THE CHAIRMAN: That the wording in the
6 first line there doesn't include all of the items set
7 out in Section 9 of the reg. It doesn't talk about
8 making a loan or the giving of a grant, it talks about
9 licences, permits, approvals, permissions or consents.
10 Those things are all the same.

11 MR. FREIDIN: Which are the words, at
12 least a large number of the words in Section 9.

13 THE CHAIRMAN: That's right.

14 MR. FREIDIN: Yes.

15 THE CHAIRMAN: And so what I'm saying is,
16 is that when you notice those differences and you take
17 as a given that without an approval all of the
18 activities set out in Section 6(1)(a) cannot go forward
19 unless approved, unless assessed.

20 MR. FREIDIN: The activities of the
21 undertaking cannot proceed unless they are approved.

22 THE CHAIRMAN: That's right. And that is
23 for licence, permit, approval, permission or consent.

24 MR. FREIDIN: No, that is -- the licence,
25 permit, approval, permission or consent to carry out

1 the undertaking cannot issue.

2 THE CHAIRMAN: Right. Cannot issue
3 without an approval, okay, that is under Section 6.

4 MR. FREIDIN: Yes.

5 THE CHAIRMAN: But then when you take a
6 look at Section 9 you are talking about three
7 additional things:

8 "The making of a loan, the giving of a
9 grant, the giving of a guarantee of debts
10 or issuing or..."

11 Take those first three things, those
12 aren't included in Section 6(1)(a). And what I'm
13 saying is -- I don't know if...

14 MR. FREIDIN: They are in subsection (b),
15 6(1)(b).

16 THE CHAIRMAN: Okay, sorry, I didn't
17 notice that.

18 MR. FREIDIN: Neither did I until Mr.
19 Cassidy - thank you very much - whispered it.

20 THE CHAIRMAN: Okay. But notwithstanding
21 that, is it your submission that the words 'any
22 undertaking' in the second line of Section 10 refers to
23 Section 9, the undertaking of making those things?

24 MR. FREIDIN: Yes.

25 THE CHAIRMAN: Then when you get down to

1 where an environmental assessment of an undertaking is
2 submitted, does that also refer to Section 9 -- to
3 those things in Section 9, or does that refer to the
4 undertaking submitted pursuant to 5(1) of the Act, and
5 if --

6 MR. FREIDIN: I think it's got to refer
7 to the undertaking of granting a licence, et cetera, in
8 9, because it doesn't make sense and I find comfort,
9 quite frankly, in the submissions made by
10 Mr. Lindgren and Mr. Hunter who went to great lengths
11 to convince you, Mr. Chairman, that Section 9 and 10
12 are inextricably interwoven having regard to the
13 history of the sections.

14 THE CHAIRMAN: And what does undertaking
15 mean in the last line?

16 MR. FREIDIN: That undertaking means the
17 undertaking which has been submitted for review.

18 THE CHAIRMAN: Pursuant to 5(1) or
19 pursuant to 9?

20 MR. FREIDIN: Notwithstanding the
21 exemption. If you have an undertaking which is exempt
22 and you submit an undertaking in relation to that
23 subject matter, all this section does, it says: That
24 undertaking which was now exempt which is no longer now
25 exempt, that undertaking is now subject to the entire

1 Act. You deal with that undertaking in the same way
2 you do with any other undertaking. That is all it
3 says. And just let me take a look, I just want to read
4 this for a minute.

5 Mr. Chairman, I think the section also
6 applies not only to 9 but it applies to any undertaking
7 which is exempt. If someone wanted to submit an
8 undertaking for environmental assessment which was
9 exempt, this section says if you do that, then
10 notwithstanding - and if it was exempt under this
11 reg -- then the provisions of the Act would apply holus
12 bolus, mutatis mutandis, whatever. I think my
13 submissions are clear, Mr. Chairman.

14 THE CHAIRMAN: Your submissions may be
15 clear but I'm not sure the section is.

16 Anyway, I think we are getting to the
17 point where our attention span is waning, so we are
18 going to take a break.

19 MR. FREIDIN: Thank you, Mr. Chairman.

20 THE CHAIRMAN: Now, Ms. Seaborn, the
21 Board would like --

22 MR. FREIDIN: I'm not finished, by the
23 way.

24 THE CHAIRMAN: No, we understand that.
25 The Board would like to direct you to give

1 consideration to what the submissions are of Mr.
2 Freidin in his re-examination. And this may be a
3 situation, Mr. Freidin, where the Board will ask Ms.
4 Seaborn to comment on some of your representations made
5 in re-examination. This is a tricky area.

6 MR. FREIDIN: With the further right of
7 reply?

8 THE CHAIRMAN: With a further right of
9 reply.

10 MR. FREIDIN: Thank you.

11 THE CHAIRMAN: Because I think we are all
12 in an area where there is some uncertainty. The Board
13 is going to have to come down with an appropriate
14 ruling on this motion which will have, I would suggest,
15 a fairly wide impact not only for this hearing but
16 perhaps for the process in general.

17 The other thing, Ms. Seaborn, the Board
18 would like to direct you to give consideration to - as
19 well as you, Mr. Freidin - that is, we would like you
20 to really consider what the undertaking consists of in
21 the light of my earlier comments vis-a-vis the
22 definition, because personally I think you should view
23 it in the light of what is the accepted - I hesitate to
24 use the word accepted because there is no such thing in
25 this area - accepted practice with respect to Class

1 Environmental Assessments and in terms of your
2 particular undertaking, why it is not a program, plan
3 or proposal in relation to those activities you have
4 outlined.

5 MR. FREIDIN: I would do that, Mr.
6 Chairman, but having regard to your comments about the
7 uncertainty, I would ask the break perhaps be a little
8 longer than would normally be the case. 45 minutes.

9 THE CHAIRMAN: Very well.

10 MR. FREIDIN: I can comment that I find,
11 Mr. Chairman, the uncertainty of it all somehow part of
12 the fun of it all.

13 MR. LINDGREN: Mr. Chairman, could I
14 respectfully ask why the Board has directed only Ms.
15 Seaborn and not the other parties to comment on the
16 submissions by Mr. Freidin?

17 THE CHAIRMAN: Well, I think perhaps in
18 retrospect maybe the other parties should have some
19 brief comment as well.

20 Again, I think in this particular area we
21 are defining very much for the purpose of this hearing
22 how far we can go in terms of the intervenors' cases,
23 and we are defining, to some large extent, what the
24 limits are on the undertaking as defined by the
25 proponent.

1 MR. FREIDIN: Well, Mr. Chairman, I
2 understand your desire to have other people respond and
3 have another opportunity, but I would just comment that
4 my comments have all been directly the result of
5 specific submissions made by other people in relation
6 to the interpretation of these sections.

7 They have had the opportunity to make
8 those submissions and they did so at length and, you
9 know, I'm making those my submissions and I don't
10 really see the necessity of playing ping pong until --

11 THE CHAIRMAN: Okay, I hear what you are
12 saying, Mr. Freidin, but here is the problem we are in:
13 A particular Ministry is a party before this Board, the
14 Ministry of the Environment, which generally has the
15 carriage or the administrative authority over this
16 particular piece of legislation.

17 MR. FREIDIN: My comments don't refer to
18 your suggestion that Ms. Seaborn make --

19 THE CHAIRMAN: Obviously we want to hear
20 what Ms. Seaborn's client has to say about some of the
21 matters which have been raised in the context of this
22 motion.

23 Given the fact that we want to call upon
24 her to give us further guidance in terms of her
25 client's position, we think it unfair that the other

1 parties who also have a large stake in the outcome of
2 this motion, vis-a-vis their own cases, that they
3 should not have an opportunity to perhaps give some
4 further consideration.

5 This is one of those rare instances where
6 what is purported to be - and, again, I hate to use
7 words like this - a relatively routine motion for
8 something before the Board which the Board thought it
9 might be able to dispose of relatively expeditiously,
10 has turned out to involve some very important,
11 essential questions, and they need determination.

12 This Board is in a position to make those
13 determinations and, in fact, must in the context of the
14 way the motion was raised, and we don't feel like going
15 off on a limb without having the fullest
16 representations from all parties involved.

17 MR. FREIDIN: Mr. Chairman, you have my
18 submissions, I have your ruling. And, 45 minutes?

19 MS. SEABORN: Excuse me, Mr. Freidin.

20 Mr. Chairman, if it's helpful at all to
21 the Board, in light of Mr. Freidin's comments about
22 other people have already made submissions, I'm quite
23 happy to just respond to the issue of what is in front
24 of the Board for approval in terms of the distinction
25 that you made under the Act without going back into

1 submissions that I made earlier.

2 THE CHAIRMAN: All right. Your
3 submssions basically aren't going to change, is what
4 you are telling me, over your earlier submissions?

5 MS. SEABORN: What I'm suggesting,
6 because as you said other parties, Mr. Lindgren may
7 want to respond again to Mr. Freidin.

8 I don't need to respond I don't think to
9 Mr. Freidin's comments on the motion itself, I would
10 like to put in front of the Board our position with
11 respect to what we view as being approved and make
12 submissions in that regard.

13 THE CHAIRMAN: You mean, what you view as
14 being the undertaking for approval?

15 MS. SEABORN: That's correct, what is in
16 front of the Board for approval.

17 MR. FREIDIN: Mr. Chairman, I took it
18 from your comments, if you are going to grant other
19 submissions by other parties that it would be limited
20 to that matter as well. We are not re-opening the
21 whole thing.

22 THE CHAIRMAN: No, no, that is
23 sufficient. I just wanted to make sure that Ms.
24 Seaborn wasn't going to further elaborate on anything
25 resulting from your re-examination and, again, she is

1 in a different position perhaps than some of the other
2 parties because the Ministry of the Environment, I
3 would suggest, has a vital interest in how that Act is
4 interpreted, as well as other parties obviously.

5 MR. FREIDIN: So does the proponent, who
6 has all kinds of undertakings.

7 THE CHAIRMAN: Mr. Colborne?

8 MR. COLBORNE: Mr. Chairman, could you
9 ask the parties how long they intend to be? I have
10 time commitments. I'm not sure how far into the
11 submissions Mr. Freidin is. I can say that if I have
12 anything at all to say at the end it would be very
13 brief.

14 MR. FREIDIN: My guess is, leaving aside
15 any further submissions I make in relation to two
16 matters you raised, and I asked for some time to think
17 about them, leaving that aside, I think I would
18 probably be another half an hour to 45 minutes.

19 THE CHAIRMAN: Okay. We'll break now for
20 three-quarters of an hour.

21 MR. FREIDIN: Thank you, Mr. Chairman.

22 ---Recess taken at 10:25 a.m.

23 ---On resuming at 11:30 a.m.

24 THE CHAIRMAN: Thank you. Be seated,
25 please.

1 MR. FREIDIN: Mr. Chairman, I'm not going
2 to deal with the issues that gave rise to my request
3 for an extended adjournment right now, I will continue
4 with my submissions and, when I'm through, indicate to
5 the Board the difficulty that I am having with regard
6 to that matter and perhaps have a little discussion as
7 to how we might best go about addressing that in a
8 meaningful and helpful way as opposed to what I don't
9 want to do; and, that is, make submissions on that
10 matter by the seat of my pants.

11 So if I might then just continue. I want
12 to deal with some submissions which were made by Mr.
13 Colborne, and I apologize if I happen to be a little
14 disjointed. I'm going to have to go back to my notes
15 for some of these.

16 He said that the Ministry did not want
17 his client to look at who gets the benefit. That is
18 not correct, we believe that he's entitled to and we
19 expect that he would lead evidence regarding what the
20 benefits are, what benefits are created by carrying out
21 the activities. I will explain that a little bit more.

22 What we are talking about, as I have
23 indicated at the outset, is what remedies you might be
24 able to fashion based on any concerns that you may have
25 regarding how those benefits are distributed in fact.

1 You obviously have to hear from Mr. Colborne's clients
2 regarding the benefits because we have indicated in our
3 evidence that there are positive and negative benefits
4 of the activities, and we have submitted that one of
5 the positive benefits which you must weigh in the
6 balance in making your decision is that native people
7 garner employment from some of those activities.

8 If he wants to lead evidence to suggest
9 to you that we have exaggerated the level of benefit
10 that is provided, if he wants to lead evidence that
11 there is no benefit provided as a result of those
12 activities, he is of course free to do so and, at the
13 end of the piece, he will say: When you weigh the
14 positive benefits of timber management don't believe
15 the evidence of the Ministry of Natural Resources that
16 my client receives positive benefits, they don't. So
17 when you have got the balance, if you had it balanced
18 on the positive side because you had benefits to native
19 people on that side of the balance, take it off and
20 change the balance.

21 He said as well: We will call evidence
22 that we get no benefit, and I already said we expect
23 him to. We do not say that he cannot lead that
24 evidence for the reasons I have indicated.

25 He said during his submissions that we

1 had led evidence about the forest industry and the
2 benefits of the forest industry to northern Ontario,
3 and if that was relevant why isn't evidence that some
4 people get no benefit not relevant.

5 My response - this is when I wanted to
6 stand up and Mr. Colborne told me to sit down - I
7 wanted to say: Mr. Colborne, we are not saying you
8 can't call that evidence.

9 What I'm saying to you, Mr. Colborne, is
10 you can call it for the purposes of the Board weighing
11 the positive and negative effects of the activities,
12 but you can't lead the evidence to support a submission
13 to the Board at the end, Mr. Colborne, that there
14 should be a term or condition that that economic
15 balance should be changed by order of this Board, by
16 the Board imposing some requirement that licences be
17 granted in some way, that industry be directed by this
18 Board to provide contracts for jobs to native peoples
19 as a precondition to approval of this undertaking.

20 That is what I was saying to Mr. Colborne
21 and that is what I say to this Board.

22 Mr. Colborne also said -- you seemed to
23 be troubled, Mr. Chairman. I don't want to leave you
24 troubled.

25 THE CHAIRMAN: Well, I'm just trying to

1 think through that should the Board arrive at a
2 conclusion that there is a negative impact out there
3 against some stakeholder as a result of the
4 activities --

5 MR. FREIDIN: A negative one.

6 THE CHAIRMAN: A negative one, and
7 although the Board may not be able to direct a change
8 that will redistribute or take care of that particular
9 impact, why can't the Board, as a condition of approval
10 on the activity, impose something on the activity as a
11 mitigating factor which will have the effect of
12 negating or reducing or mitigating the undesirable
13 impact?

14 MR. FREIDIN: All right. But the
15 undesirable impact -- I mean, I have to bring it back
16 down to the case before us, the undesirable impact --
17 or, let's not talk impact, the undesirable situation
18 that we are talking about is a socio and economic
19 condition.

20 THE CHAIRMAN: Not in every case. For
21 example -- no, just a moment.

22 MR. FREIDIN: All right.

23 THE CHAIRMAN: For example, suppose the
24 complaint is that by carrying out harvesting activities
25 close to an Indian reserve - just as an example - the

1 wildlife and fisheries are being adversely affected
2 and, therefore, that particular stakeholder is being
3 impacted negatively as a result of the activities; now,
4 why can't the Board in approving the activity--

5 MR. FREIDIN: You can.

6 THE CHAIRMAN: --say you cannot clearcut
7 or you cannot harvest in that area. That will have the
8 effect of mitigating that undesirable impact into a
9 positive one.

10 MR. FREIDIN: No problem. That is a term
11 and condition in relation to how we carry out that
12 activity which constitutes the undertaking. We have
13 got no problem with that at all. I mean, I would make
14 the submission that our planning process in fact
15 provide for that and that you shouldn't make a blanket
16 rule like that, but obviously our planning process has
17 to provide in that example native people the
18 opportunity to come forward and make that submission
19 and if they don't like our decision to have a bump-up
20 request, that is exactly what our planning process
21 does.

22 And we believe that we do deal with
23 native peoples in that fashion and the process is
24 designed to deal with native peoples in that process
25 with full rights of bump-up.

1 So I go back to the thing which gave rise
2 to my motion in the first place; and that is the
3 suggestion in the materials filed by some of the
4 parties that the Board, if it found that the social and
5 economic environment of certain people was one which
6 you would like to see improved, you can't -- the Board
7 doesn't have the legal power to remedy that in the
8 fashions that I have already talked about.

9 What you can do, of course though, when
10 he leads the evidence about whether he gets the
11 benefits or not, you have to look at that and see
12 whether it contradicts our evidence as to how the
13 benefits, positive and negative, flow from the
14 activities to come up with your decision as to how you
15 will weigh -- how the balance will end up at the end of
16 the hearing.

17 THE CHAIRMAN: With the exception of
18 those areas which are inextricably bound up in the
19 manner in which you carry out the undertaking. And
20 again it goes back to the argument as to what (a) is
21 the undertaking; and (b) is licensing, for example, a
22 method or a way of carrying out the undertaking which
23 comprises in part the activities.

24 And, again, if that is the proper
25 interpretation, then the Board may have the

1 jurisdiction to alter the method of implementing the
2 undertaking.

3 MR. FREIDIN: And I understand your
4 position, Mr. Chairman.

5 THE CHAIRMAN: Okay. That is the
6 difference between us, at least for the purposes of the
7 submissions.

8 MR. FREIDIN: And I just want to make
9 sure before I leave this, Mr. Chairman, that you
10 understand that it is our position that even if Mr.
11 Colborne gets up and says his client has no positive
12 benefit, no jobs, nothing from the activities of timber
13 management, that does not mean -- that does not mean
14 that the activities of timber management have negative
15 environmental effects on his client.

16 THE CHAIRMAN: You are saying that no
17 benefit does not equate --

18 MR. FREIDIN: To causing a negative
19 benefit.

20 THE CHAIRMAN: Well, if it doesn't cause
21 a positive benefit, is it totally neutral?

22 MR. FREIDIN: Certainly is. No benefit.
23 You provide benefits as a result of getting involved in
24 the activities, and if you don't get any jobs, you
25 don't get any economic benefits at all, you don't get

1 any economic benefits. There is no economic benefit.

2 THE CHAIRMAN: And you are saying no
3 economic benefit is not a disbenefit either?

4 MR. FREIDIN: It's not a negative effect
5 under the Act which you throw on to the scale. It's
6 not that.

7 The social and economic environment
8 anywhere in this province that anybody finds themselves
9 in is not the result of not getting involved, you know,
10 in a specific activity. I mean, social and economic
11 conditions are the result of all kinds of things.

12 I mean, I'm sure you will hear evidence
13 that the social and economic conditions of native
14 peoples was not so great perhaps before timber
15 management, I don't know; but it's not negative -- the
16 conditions are not created, or the social and economic
17 conditions don't exist or not exist just because of
18 timber management.

19 So I'm saying if they don't have any
20 involvement at all in timber management, all it means
21 in terms of environmental assessment inquiry, it means
22 that there is no positive benefit to those people, and
23 you should know that and you should keep that in
24 account when you are weighing --

25 THE CHAIRMAN: Provided that the

1 activities do not create a negative benefit--

2 MR. FREIDIN: Right.

3 THE CHAIRMAN: --against those
4 stakeholders?

5 MR. FREIDIN: Exactly. In the sorts of
6 situations that you have just described, if your
7 activity is next to a reserve is going to cause a
8 negative effect on their ability to earn income, then
9 obviously that is a negative effect of one of the
10 activities and you have full discretion to make an
11 order to say: You can't do that, you can't do that
12 there, or you can't do it everywhere, depending on how
13 you view the evidence.

14 MR. MARTEL: Mr. Freidin, this is not
15 southern Ontario and in northern Ontario when one of
16 the economic activities happens to be forestry or
17 mining and your reserve happens to be in northern
18 Ontario, there is no other place for you to go to
19 derive benefits from those resources, you have to
20 relocate.

21 MR. FREIDIN: I understand your
22 submission, but that does not change the proposition
23 that I have made and the proper manner in which
24 environmental assessment must be conducted. I am
25 sorry, that is the way it is, in my submission.

1 As I indicated before, Mr. Chairman, this
2 is not an environmental assessment in relation to the
3 economic well-being of northern Ontario or economic
4 development of northern Ontario, this is an
5 environmental assessment in relation to the undertaking
6 of timber management and it is the positive and
7 negative environmental effects of that undertaking
8 which are up for review and that only.

9 This is not the Fahlgren Commission
10 either, this is the Environmental Assessment Board with
11 a specific undertaking before it, and that is the limit
12 of its jurisdiction.

13 ---Discussion off the record

14 MR. FREIDIN: Should I continue, Mr.
15 Chairman?

16 Now, I want to deal with another concern
17 of Mr. Colborne and indicate to him that it is not the
18 intention of the proponent to stop him calling evidence
19 about it; and, that is, there has been discussion about
20 aboriginal and treaty rights.

21 Now, I'm not submitting, and the Ministry
22 is not submitting that perhaps the view that native
23 people have of that matter is completely irrelevant.
24 You will recall before Panel No. 6, and I will direct
25 you - I'm not going to read from the transcript, I will

1 direct you to the transcript from Panel No. 6, and I'm
2 not too sure how far back I should go - from page 7189
3 through to 7198.

4 And basically, in a nutshell, Mr.
5 Chairman, in my opening remarks to the Board in
6 relation to that panel, I indicated the reasons that we
7 led evidence about aboriginal and treaty rights and I
8 indicated that I wanted to make sure that the Board
9 didn't make a determination in this undertaking, in
10 this hearing based on its view, on a view that it might
11 come to, on what aboriginal and treaty rights are,
12 because that is a matter that is complex and being
13 dealt with in other forums.

14 I did not say - and if my remarks were
15 taken as saying this, I apologize - but I did not say
16 that native people cannot come before this hearing and
17 talk about sort of their view of - it's hard for me
18 to - their history, about their traditional way of
19 life, how they believe timber management affects their
20 traditional way of life and values which are important
21 to them. In fact, I indicated that they should come
22 forward and indicate just that, what are the values
23 which are important to them.

24 And to the extent that values are
25 important to them because of a perception that they

1 have as to what their aboriginal and treaty rights are
2 affects the way they perceive the effect of timber
3 management, and I think they will tell you, and they
4 should tell you.

5 And if I could use an analogy, Mr.
6 Chairman, to try to explain to you the point I'm trying
7 to make. The evidence of the Ministry is that the
8 application of pesticides, chemical pesticides does not
9 pose unacceptable health hazards. That was the clear
10 import of our evidence in Panels 12 and 13.

11 Our evidence was that we acknowledge and
12 we understand that there is concern amongst members of
13 the public about the application of those products,
14 notwithstanding our view as given by our expert
15 witnesses, and that the Ministry responds to that
16 concern in a number of ways, one of them being posting
17 certain kinds of notices and having provisions in our
18 procedures to address that very thing.

19 So I'm saying that part of the social
20 environment in the context of the topic of pesticides
21 is one which is affected or includes a perception, but
22 if that perception is a substantial one - it doesn't
23 have to be an all pervading one - a substantial one,
24 then I would think it's part of the social environment
25 and it's quite open to the Board to say: When you

1 carry out one of the activities which comprises timber
2 management, one of the terms or conditions is that we
3 want you to address that value, that concern, and we
4 want you to do it in the following way.

5 I'm saying it's no different when we come
6 to our aboriginal people. If they indicate to you that
7 as a result or because they are native people they come
8 to perceive timber management with different baggage
9 than perhaps a non-native person, that is relevant
10 evidence for them to lead; that is relevant evidence,
11 therefore, for you to hear. And if you believe that
12 they have described a situation to you which you
13 believe is created or is somehow adversely affected by
14 the activity of actually carrying out timber management
15 and exactly where you do it, then you consider that and
16 you pose terms or conditions in relation to the
17 activities of carrying out timber management as you
18 deem appropriate.

19 And going back to the example that you
20 gave, if you were convinced in every case regardless of
21 location, regardless of native band, size of community,
22 regardless of everything, that it was never, ever
23 appropriate to carry out a certain activity within -
24 well, I don't care - some distance of a native reserve
25 because it had some adverse effect on the social

1 environment, the cultural environment in that area, you
2 impose a term or condition.

3 But what I'm going to say to you at the
4 end of the case, I can tell you this now, is that there
5 probably weren't - well, I should say weren't because I
6 have to hear the evidence of the native people - but if
7 I'm not convinced or my client is not convinced that
8 there are situations that can be dealt with in a
9 generic way like that in relation to carrying out
10 timber management, I will say to you that our process
11 provides, in fact is the mechanism, where those kinds
12 of concerns get raised.

13 Where native people make those views
14 known, we try to address them as best we can, they
15 don't like the decision, they have got all the
16 provisions of the bump-up that are built into the
17 planning process that we are putting forward.

18 So I'm not saying these areas of native
19 history and traditional use are not up for evidence,
20 I'm not saying you can't look at whether we provide --
21 that any benefit is provided.

22 Now, hopefully it's clear what the
23 Ministry's view is, is what you can do with that
24 evidence and also, in our respectful submission, what
25 you can't do based on that evidence.

1 If I could have one moment, please.

2 THE CHAIRMAN: Is it open to us, Mr.
3 Freidin, to appropriately structure or fashion the
4 planning process within which the activities will be
5 carried out, and that goes back to the definition
6 question again indirectly--

7 MR. FREIDIN: I'm sorry. All right.

8 THE CHAIRMAN: --in order to address the
9 concerns raised by other stakeholders.

10 MR. FREIDIN: Mr. Chairman, I think you
11 can fashion terms of the planning process to address
12 these concerns regardless of how you define the
13 undertaking, because a planning process is going to be
14 part of what comes out of this hearing. I mean, you
15 are going to -- whether you approve a planning process
16 or whether you approve the undertaking on the condition
17 that you follow the planning process, doesn't really
18 make any difference.

19 THE CHAIRMAN: Well, it depends what
20 you're putting forward.

21 MR. FREIDIN: Well, all right.

22 THE CHAIRMAN: If you are putting forward
23 to us a planning process in relation to certain
24 activities - which is what I believed was before us,
25 subject to me getting further instructions, et cetera -

1 then, yes, those kinds of things could be addressed in
2 the Board's decision vis-a-vis conditions of approval
3 if it approved the undertaking.

4 MR. FREIDIN: And I submit to you, again,
5 maybe we will deal with this later when we deal with
6 it, but I'm saying to you that if you have a concern
7 that should be addressed through a planning process, a
8 concern - we will use the example of native people,
9 just because the whole issue arose in that way - that
10 could be addressed through something in the planning
11 process, you know, with the limitations that I have
12 already indicated, then you impose that as a term or
13 condition.

14 For instance, we have heard that the
15 social environment of some native communities is such
16 that they are remote, that in terms of notification of
17 what is going on it's difficult for them to get papers
18 or that they need translations. Well, let's assume
19 that we said: Well, too bad. Then it would be open to
20 the Board, regardless of what we are asking approval
21 for, which is the activity, you could say: No way, Mr.
22 Freidin, your client doesn't get approval unless you
23 address a negotiate -- you have got to have a planning
24 process within which this is going to actually take
25 place, provide notice in this way, give specific notice

1 to specific bands, publish a notice in native languages
2 in certain cases, go to the native reserves if they
3 invite you.

4 Now, we have suggested that those would
5 be reasonable terms and conditions and they are in our
6 draft terms and conditions, and we leave it open to you
7 to impose those if we didn't.

8 THE CHAIRMAN: Because you are putting
9 forward essentially a planning process within which
10 certain defined activities are going to be carried out
11 and I go back again to the fact that I cannot see the
12 justification for your original submission on the
13 definition of the undertaking relating only to the four
14 activities and not relating to the context in which
15 those are going to be delivered.

16 MR. FREIDIN: All right. Now, Mr.
17 Chairman, I would prefer, as I indicated at the
18 beginning, not to get into that until we get to it.

19 But I think subject to all the concerns -
20 or not all the concerns - the concern that you may have
21 and the misunderstandings that I'm having as to your
22 concern, I think my submissions are clear enough to
23 address that matter.

24 THE CHAIRMAN: Okay.

25 MR. FREIDIN: Let me address some of the

1 submissions made by Mr. Hunter. And the submissions
2 basically that I want to address relate to his
3 submissions regarding the use of the word 'allocation'
4 in my Notice of Motion, and other submissions I guess
5 he made in relation to words which were not
6 specifically defined in the Notice of Motion.

7 Mr. Hunter in relation to Section 9 of
8 the regulation said - I'm sorry - the words in Section
9 9 of the regulation were repeated in my Notice of
10 Motion. He says that the motion is for an order that
11 the Environmental Assessment Board does not have the
12 jurisdiction to make orders respecting loans, grants,
13 guarantees or debts, the issuance of licences, permits,
14 and he is suggesting that I have to define what each of
15 those things are.

16 And in my submission, Mr. Chairman, it's
17 clear that really what all those words mean are they
18 all should be interpreted ejusdem generis, and that
19 they all really refer to authorizing documents or
20 authorization which allows you to implement the
21 activities. And there is no real magic, it's a matter
22 of statutory interpretation.

23 The word 'licence' is pretty clear, that
24 it would include the kinds of things that we are
25 talking about, but I don't think I really have to go

1 any further in relation to that.

2 He made a comment that, or submission
3 that somewhat confused me. I didn't understand the
4 significance of it. He said my Notice of Motion refers
5 to in the second line: Loans, plural; grants, plural;
6 gaurantees of debts, plural; and then he took us back
7 to the section and he said: Well, it is says the
8 issuing or the granting of a licence, permit. Now, I'm
9 not too sure what the significance of that was, but it
10 might have been saying: Well, it's the simple matter,
11 it's just a grant to somebody.

12 And I submit to you, Mr. Chairman, that
13 the Interpretation Act of Ontario, states in Section
14 27(j) the following:

15 "Words importing the singular number
16 only..."

17 And I'm paraphrasing, I'm leaving out
18 reference to masculinity:

19 "... words importing the singular number
20 only include more things of the same kind
21 than one. "

22 And the Interpretation Act says that,
23 because if it was otherwise a bunch of statutes which
24 would have loan(s). I mean, as a matter of statutory
25 draftsmanship, You can refer to things in the singular

1 and the Interpretation Act has the effect that I have
2 indicated.

3 So I submit that you shouldn't give any
4 weight to the fact that my motion refers to plural when
5 it refers to loans, and somehow the...

6 THE CHAIRMAN: Well, I mean, that is an
7 answer of course under the Interpretation Act when you
8 are looking at specific words, but I'm not sure that
9 totally answers any differentiation there must be
10 between a specific grant or grants, and a licensing or
11 permitting regime; in other words, regime not being
12 reference to specific authorizing documents but to the
13 overall regulatory scheme.

14 MR. FREIDIN: Mr. Chairman, I think you
15 have my submissions on that, in my submission, and if
16 you don't have them, they are: That if the regulation
17 says that you do not have the jurisdiction, that the
18 issuance of a licence is exempt, then, in my
19 submission, it is a reasonable extension of that that
20 the mandating of a licensing scheme is equally exempt.

21 THE CHAIRMAN: Well, as I understood it,
22 that wasn't the position taken by Ms. Seaborn.

23 MR. FREIDIN: Well, that's right, and I
24 disagree with Ms. Seaborn.

25 MR. FREIDIN: And the word -- just one

1 moment-- if I could have just one moment. And also
2 Section 9 says: "The undertaking of making a loan."
3 The definition of 'undertaking' means an activity or a
4 plan or a program as you've indicated.

5 THE CHAIRMAN: That is under the EA Act;
6 isn't it?

7 MR. FREIDIN: I think you have to go to
8 the EA Act for the definition of undertaking when you
9 are reading a regulation with the same wording, yes.
10 That is, in my submission, clear law.

11 So if you have an undertaking of granting
12 licences, then the undertaking of granting licences is
13 exempt by reason of Section 9 of the regulation, and I
14 do not believe that the - well, that is my submission,
15 Mr. Chairman.

16 THE CHAIRMAN: Excuse me. Let me just
17 get this straight. Your proposition is that the word
18 'undertaking' used in all three instances there -
19 although the undertakings may be different - but what
20 constitutes an undertaking derives its definition from
21 the definition of the word 'undertaking' in the Act?

22 MR. FREIDIN: Has the same definition or
23 from the regulation in this case you have the specific
24 undertaking referred to such as 9, the undertaking of
25 granting a licence; it includes that as well.

1 THE CHAIRMAN: But undertaking under the
2 EA Act has an extended meaning other than just the
3 issuance; it can refer to a program, proposal, plan?

4 MR. FREIDIN: If that in fact is what you
5 are doing.

6 THE CHAIRMAN: But that could cover, in
7 your submission I guess, regime; is that what you are
8 saying?

9 MR. FREIDIN: Yes.

10 THE CHAIRMAN: Okay. That is what I
11 want.

12 MR. FREIDIN: Yes.

13 THE CHAIRMAN: And since there is no
14 other definition of undertaking in the regulation, then
15 you are required in applying the regulation to go back
16 to the constating statute?

17 MR. FREIDIN: Correct. In fact, Mr.
18 Chairman, I think the law is quite clear; that is, the
19 regulation had a definition of undertaking which was
20 inconsistent with the Act. In a case of a conflict
21 like that the definition in the statute prevails.

22 THE CHAIRMAN: I think you are right.
23 Okay.

24 MR. FREIDIN: If I can have a moment, I
25 think I may have made this submission.

1 Just one comment, Mr. Chairman, and I
2 won't take but a moment, but it's a submission that
3 Mr. -- I made my submission on this but it was a
4 comment that was made extremely strongly by Mr. Hunter.

5 He said the difference - speaking about
6 native peoples - is that the social and economic and
7 cultural needs of natives are so substantially
8 different than non-native communities that the Ministry
9 of Natural Resources should meet those concerns through
10 allocation in the broadest sense.

11 It is comments such as that, Mr.
12 Chairman, that convince me that Mr. Hunter is
13 suggesting and will be seeking, plans to seek that that
14 substantially different social, economic and cultural
15 need be addressed by this Board through making an order
16 which will relate to allocation in the broadest sense.

17 And, again, you have my submissions on
18 why, in my respectful submission, this Board cannot do
19 that notwithstanding that you and everyone might agree
20 that that substantially different social, economic and
21 cultural need is one worthy of being addressed. I
22 repeat, it is something which can be addressed, it is
23 something which is being addressed in a forum other
24 than this one.

25 THE CHAIRMAN: Well, if you accept the

1 argument - I'm not saying the Board does - that it
2 can't address it through allocation, this other social
3 need, if the Board were persuaded that it should be
4 addressed, would you agree that the Board could
5 mitigate the adverse social or economic impact
6 resulting from the activities in the undertaking before
7 us through conditions of approval?

8 MR. FREIDIN: Yes, you can, subject to
9 the comments I made earlier.

10 Mr. Chairman, the terms and conditions of
11 all parties are due fairly shortly. If I turn out to
12 be quite wrong in terms of what is going to be sought
13 by way of terms and conditions, I guess that will be a
14 matter -- we would have spent all this time for no
15 reason. The terms and conditions, we don't have them.
16 That is one of the problems we have been labouring
17 under for some time. When we do have them we'll see
18 whether we have an issue that is a real one or not.

19 The last question that I would, or word I
20 would refer to is the word 'entitlement', which again
21 is a word which I used in the Notice of Motion where I
22 indicated that the Board didn't have the jurisdiction
23 to deal with issues concerning entitlement to or
24 allocation of the benefits of the timber resource. I
25 think you could almost take the word allocation out of

1 there, it might make it easier to read. It said:

2 "To deal with issues concerning
3 entitlement to the benefits of the timber
4 resource."

5 Entitlement, what do I mean by that? I
6 think it was clear, Mr. Chairman, that entitlement
7 means you can't deal with entitlement in terms of the
8 legal right to the resource for the land for the
9 reasons that we canvassed in Panel 6 and that you
10 discussed during this motion, and it also would include
11 entitlement by way of an order of this Board that jobs
12 and contracts be provided to specific persons through a
13 mechanism such as the directing of industry to provide
14 jobs and contracts to certain people, a suggestion
15 which, in my submission, is quite clearly made in the
16 statement of issues filed on behalf of Treaty No. 3 in
17 subparagraph (2)(e) when they say:

18 "Why were there no alternatives examined
19 which involved management with more
20 direction to the industry regarding
21 allocation of economic benefits from the
22 forest resource (i.e., contracts and
23 jobs)?"

24 And you have my submissions as to why
25 that matter should not and cannot be a term or

1 condition of the Board.

2 THE CHAIRMAN: I think you stated that it
3 is the Ministry's position that evidence of the lack of
4 benefit in terms of the timber resource to, for
5 example, the native communities is properly before the
6 Board?

7 MR. FREIDIN: Yes.

8 THE CHAIRMAN: As it forms part of the
9 impact of the activities on the environment,
10 particularly the social and economic environment of
11 those who would be impacted by those activities.

12 MR. FREIDIN: Yes. Now, Mr. Chairman, if
13 we had led evidence -- again, I think my point is
14 clear, but to make absolutely sure that it is clear:
15 If the Ministry's evidence was that there was
16 absolutely no economic benefit to native people from
17 timber management whatsoever, and the native people
18 agreed, then it would be my submission that evidence
19 that no economic benefit was provided to native peoples
20 from timber mangement would be irrelevant for the
21 reasons I've already indicated. We wouldn't have to
22 lead any evidence to tell you what the pluses and the
23 minuses were of the activities; there was agreement on
24 that.

25 Mr. Chairman, I would like to deal with

1 very briefly - oh, I'm sorry, not so briefly -
2 comments, examples of allocation. Let's deal with this
3 word 'allocation'.

4 Mr. Hunter went through and he listed, I
5 don't know, five, six, seven different places the word
6 allocation was used, and he said: Come on, how could I
7 possibly know what is being spoken about when you are
8 talking allocation in your Notice of Motion, it is used
9 a whole bunch of different ways in the evidence.

10 Well, the first general comment I would
11 like to make is that with respect to Mr. Hunter I think
12 he was in a smoke-generating exercise when he made
13 those submissions because the clear words in the Notice
14 of Motion talk about allocation of benefits, not just
15 allocation. And allocation of benefits I think is
16 clear, it's clear what that means. We are talking
17 about these benefits through jobs, through contracts,
18 through licences, that sort of thing.

19 He referred to Page 168 of the Timber
20 Management Planning Manual, and I intend to go through
21 these one at a time if I can find the Timber Management
22 Planning Manual.

23 He used a word equivalent to the word
24 allocation. And certainly there is no evidence about
25 this, but an allocation means "designation of forest

1 estate'. That is not in any way an allocation of
2 benefits, that is the creation of a management unit.

3 On page 11 of the Timber Management
4 Planning Manual there is reference to, and I want to be
5 accurate when I refer to these, Mr. Chairman, so I will
6 just be a moment. On page 11 he made reference -- and
7 I don't know the actual place it was, my notes say:

8 "The determination of allocation includes
9 allocations of areas for harvest (i.e.,
10 when there's a timber management plan)."

11 Well, the evidence is quite clear that
12 allocation of areas for harvest is just that,
13 allocation of areas where you can go and harvest,
14 whether it's in the five-year term of the plan. That
15 is what the evidence has been throughout. It's not the
16 allocation of benefits. Mr. Hunter, every time he did
17 this he left out the word 'benefits'.

18 Then he referred on to other pages and
19 other tables where it talks about allocation of areas
20 for renewal and maintenance. The same submission
21 applies there. In those cases through allocation you
22 are basically identifying on a map where you can go and
23 carry out the activity.

24 He then referred to the evidence of Mr.
25 Crystal, which was in Exhibit 209, which is the witness

1 statement for Panel No. 6, and he referred to three
2 parts -- three pages.

3 THE CHAIRMAN: Sorry, which page?

4 MR. FREIDIN: Page 176. He quoted the
5 last two lines on page 176:

6 "MNR recognizes obligations under Indian
7 treaties and in allocating such resources
8 gives primary consideration to
9 subsistence use by native people."

10 Well, we use the word which is in the
11 District Land Use Guidelines where in fact we quite
12 clearly, my client quite clearly states that's when you
13 are in fact granting those rights, allocating those
14 rights, that there is primary consideration given to
15 subsistence use by native people. I don't see how that
16 in any way confuses what I meant by allocation in the
17 Notice of Motion.

18 On page 179 he refers to the passage
19 which you find at the bottom of the page that says,
20 page 179, last four lines:

21 "MNR and the Province of Ontario are
22 committed to effective consultation with
23 Indian bands concerning resource
24 development on the land adjacent to
25 Indian reserves where such development

1 has the potential for significant impact
2 on the band."

3 Now, I'm not too sure - well, I have a
4 note as to why he made reference to that section, but
5 if he is saying somehow that we led evidence, we are
6 committed to effective consultation, and we talk about
7 these sorts of things, that is true.

8 You've heard my submissions and you've
9 heard the evidence on that, but that doesn't address
10 the issue as to the scope of the remedy that this Board
11 can formulate, and you've heard my submissions on that.

12 And on page 180 in the second full
13 paragraph it says:

14 "Apart from the issue of Indian land
15 claims, Ontario is prepared in
16 conjunction with the federal government
17 to make Crown Ontario land available to
18 Nishnawbe-Aski Nation communities to meet
19 community needs including economic
20 needs."

21 That's true. That doesn't address the
22 issue which is before you; and, that is, whether this
23 Board can order that that be done. And for the reasons
24 that I've indicated, with respect, Mr. Chairman, the
25 Board cannot do that.

1 He also referred to Exhibit No. 5 and, in
2 particular, to Page 242 - I'm sorry 244, wherein the
3 letter from Mr. Douglas to Mr. Ward - sorry, to
4 Mr. Krasnick of ONAD, under the heading of Harvest on
5 page 244, in Item 2 it says:

6 "The economic benefits which accrue to
7 those employed in harvest activities
8 would also be realized by native
9 people and some native communities who
10 engage in logging."

11 That, Mr. Chairman, is a fact according
12 to the evidence of the Ministry of Natural Resources,
13 and for all the reasons I've already indicated, that
14 native people are quite within their rights to lead
15 evidence in relation to that matter for the reasons
16 that I've indicated.

17 Panel No. 10, and I'm not going to refer
18 you to the -- take the time to actually refer to a
19 particular panel, Panel No. 10, he says: Here's Mr.
20 Clark's table. He says: Look, it talks about
21 redistribution of benefits which could be caused by
22 harvest or something. Well, again, it's a fact. If
23 they want to lead evidence that that is not true, they
24 should lead it.

25 But, again, it's all subject to the

1 submissions I've made, and I won't take the time to go
2 through the other ones. In my submission it was -- you
3 have my submissions.

4 I'm not going to make any submissions on
5 his comments on the area of the undertaking; that is
6 going to be the subject matter of evidence in Panel 17,
7 and we might very well get into that issue now, but I'm
8 not going to take the time to do that now.

9 I want to refer to one case referred to
10 by Mr. Colborne and that, subject to dealing with this
11 outstanding matter, would be my final submission.

12 You'll find that case -- and I believe
13 the passage I want to refer to is at page 83 of the
14 book of authorities filed by Mr. Colborne. And, Mr.
15 Chairman, am I correct that that is page 35 of the
16 reported case?

17 THE CHAIRMAN: Yes.

18 MR. FREIDIN: Thank you.

19 You will recall, Mr. Chairman, that that
20 was the case where, in effect, an affirmative action
21 plan was sought by the native group within the context
22 of a hearing dealing with natural resources, and the
23 court held that as a matter of statutory interpretation
24 the Board did not have the jurisdiction to grant that
25 kind of relief.

1 And Mr. Colborne acknowledged the facts
2 were somewhat different, the statute was different, but
3 commended the case to you for reading but didn't really
4 make, in my view, any firm submission as to exactly to
5 the conclusions you should come to.

6 I don't want to leave it hanging. I want
7 you to know what my interpretation of that case is.
8 The section that he referred you to on page 83 of his
9 book of authorities was the first full paragraph after
10 the indented part. He referred basically -- he didn't
11 read the whole paragraph, what he did read to you was:

12 "The Board's jurisdiction..." starting on
13 the second line:

14 "...is governed and controlled by the
15 statutes to which I have referred and
16 in conformity with the purpose for which
17 these statutes were enacted. The
18 jurisdiction is limited to the regulation
19 and control of the development of
20 energy resources and energy in the
21 Province of Alberta. The powers with
22 which the Board is endowed are concerned
23 with natural resources of the area rather
24 than with the social welfare of its
25 inhabitants."

1 He didn't read the rest. But I would
2 like to read it:

3 "And it would, in my view, require
4 express..." and I emphasize the word
5 'express':

6 "...it would require express language to
7 extend the statutory authorities so
8 vested in the Board so as to include a
9 program designed to lessen the age-old
10 disadvantages which have plagued the
11 natives since their first contact
12 with civilization as it is known to the
13 great majority of Albertans."

14 And. In my submission, Mr. Chairman,
15 when you are dealing with statutory interpretation.
16 The phrase 'express language' means clear, unambiguous
17 authority to do specifically what is being sought.

18 I'm suggesting to you, and I submit with
19 respect, there is no express language in the
20 Environmental Assessment Act which would empower you
21 somehow to do that which I have indicated to you the
22 Board cannot; and, that is, to make orders granting
23 licences, redistributing the benefits that flow from
24 timber management, ordering industry to provide jobs,
25 contracts or other economic benefits to any specific

1 person or party.

2 Those, Mr. Chairman, subject to the
3 matter that was raised earlier, are my submissions.

4 THE CHAIRMAN: Thank you, Mr. Freidin.

5 MR. FREIDIN: Now, I guess while I'm on
6 my feet, how are we going to deal with that?

7 I had a brief conversation with Ms.
8 Seaborn and Mr. Cassidy and I guess a fleeting
9 conversation with Mr. Lindgren.

10 To be quite frank with you, Mr. Chairman,
11 I am not - I know we just had 45 minutes talking about
12 it - absolutely clear what the issue is that you wanted
13 to address, and perhaps the concern that you may have
14 which gave rise to you asking the question. I'm not
15 sure.

16 So what I'm saying is, I really -- and
17 you've indicated it's an important matter, and I agree
18 with you, and I don't want to make submissions based on
19 my perception, perhaps improper. You may very well be
20 able to clarify exactly what you mean for me now and I
21 may respond: Well, I need some more time now that
22 you've made that clear.

23 I don't know what my friends' positions
24 are as to whether they have a clearer perception of
25 what your concern was and they are willing to address

1 it now, and I'm in your hands as to how you want to
2 deal with it.

3 I'm just saying I'm not in a position to
4 deal with an important matter such as you've raised
5 without some considered thought.

6 THE CHAIRMAN: Okay. In order to clarify
7 what the Board is concerned about, I think we can say
8 the following: When applying the Environmental
9 Assessment Act, there is reference in the Act in
10 various sections in the regulations to the term
11 'undertaking' and it is of some importance that the
12 definition of what the undertaking is and what is
13 before the Board is clear in both the mind of the Board
14 which has to render the decision and also in the minds
15 of the various parties that have to participate in the
16 process.

17 Now, it has always been a somewhat hazy
18 area under the Environmental Assessment Act as to how
19 the entity called 'a class environmental assessment' is
20 justified on a statutory basis under the provisions of
21 this Act. And those who have wondered about that
22 question have, to my knowledge, relied on the authority
23 contained in the definition Section 1(o); that a class
24 environmental assessment usually referred to or was
25 authorized under a proposal, plan or program in respect

1 of an enterprise or activities by or on behalf of the
2 particular type of party, and in going on with the rest
3 of the definition words used in Section 1(o).

4 Now, you seem to indicate at the
5 beginning of the submissions that your definition of
6 the undertaking related solely to the four activities;
7 harvest, access, renewal and maintenance. Our
8 difficulty was, is that we realize - and I think you
9 agree - that those activities can't be delivered in a
10 vacuum, they can't be implemented in a vacuum, and the
11 framework that is put forward by the Ministry for the
12 delivery of those activities is and has been a planning
13 process; and, of course, there is a lot of evidence
14 that has been adduced and a lot of evidence which has
15 been subject to cross-examination on that planning
16 process.

17 So the Board wanted clarification on
18 whether or not the proponent's definition of the
19 undertaking was a proposal, plan or program in respect
20 of the four activities, which is what the Board
21 believed it was.

22 Now, the reason that that may be
23 important is because it may mean that the program or
24 proposal within which these activities will be carried
25 out, the framework, is up for approval, is what is also

1 being approved before this Board, because it comprises
2 the undertaking and it comprises the undertaking in the
3 Class EA sense of the word.

4 These are activities that are recurring
5 in nature, but they can't be delivered in a vacuum,
6 they can't be delivered in the absence of a planning
7 process and, if they can, that is not the way the
8 proponent has put it forward.

9 MR. FREIDIN: Mr. Chairman, could you
10 perhaps help me as to the practical implications, if
11 any, that arise as to where or how you define that
12 undertaking if in fact at the end of the piece, either
13 way, you can end up with an approval that says you can
14 carry out the activities and you also end up with a
15 planning process which is imposed by way of terms and
16 conditions.

17 And the reason I ask that is because I do
18 not, and I would suggest to you, Mr. Chairman, that the
19 Board should not, enter into a legal discussion about a
20 matter which has no practical implications for the
21 reasons the courts avoid such situations.

22 THE CHAIRMAN: All right. Well, the
23 Board certainly won't endeavour to go down that
24 particular road. The practical implications, as I view
25 it, are that if it is a program, proposal or plan with

1 respect to certain named activities, then the
2 alternative methods of implementing that undertaking
3 may involve different planning considerations, a
4 different planning framework; in other words, an
5 alteration of the framework within which you will
6 deliver those activities or implement them.

7 And when you are looking at not only the
8 activities per se and looking at alternatives to some
9 of those activities, you may also be looking at the
10 reasonable alternatives to the program, to the planning
11 process under which those activities are delivered.

12 MR. FREIDIN: Am I correct that you
13 believe that that has then some relationship to this
14 motion and the issue of licences. Is that --

15 THE CHAIRMAN: Well, apart -- okay.

16 MR. FREIDIN: No, I don't know about the
17 rest.

18 THE CHAIRMAN: Yes, apart from the
19 question of exemption, leave that aside--

20 MR. FREIDIN: Yes.

21 THE CHAIRMAN: --whether Section 9 and/or
22 10 constitutes an exemption.

23 MR. FREIDIN: We are going to assume it
24 does not then for the purpose of your comments.

25 THE CHAIRMAN: Okay, for the purposes of

1 my comment. If it did not, then you might argue that a
2 licensing regime is part of the planning process within
3 which the activities are delivered.

4 MR. FREIDIN: Or should be.

5 THE CHAIRMAN: Or should be, that's
6 right; and, therefore, might properly be the subject
7 matter of not only evidence adduced by intervenors or
8 other parties, but also might properly be within the
9 jurisdiction of the Board to address in approving the
10 plan or program with respect to the named activities.

11 MR. FREIDIN: Okay. And can I ask you -
12 if you can't you obviously won't - but let's put aside
13 the assumption, let's now assume that my submission is
14 correct, that licensing is exempt, then...

15 THE CHAIRMAN: All right. The practical
16 impact or import of that may be that you can look at
17 the plan or program and the activities, but that the
18 Board could only deal with the approval of the plan and
19 the carrying out of the activities within the plan.

20 MR. FREIDIN: The planning process you
21 are talking about?

22 THE CHAIRMAN: The planning process, but
23 not deal with licensing. It could, of course, take a
24 look at the impact of the activities, the carrying out
25 of the activities through licensing to determine

1 whether or not there should be some modification to
2 those activities--

3 MR. FREIDIN: Right.

4 THE CHAIRMAN: --but not to the licences.

5 MR. FREIDIN: Right. The fact that they
6 be carried out through licences would really be of no
7 import.

8 THE CHAIRMAN: That's the vehicle, that's
9 the vehicle. That appears to me to be the two sides of
10 the scenario and why it is somewhat important that we
11 determine what the undertaking is.

12 MR. FREIDIN: If I could just have one
13 moment, Mr. Chairman.

14 ---Discussion off the record

15 THE CHAIRMAN: And, Ms. Seaborn, while
16 he's conferring. Those questions, as I have
17 articulated them, I think are important for the
18 Ministry of the Environment to consider in terms of
19 what its view is as to the proper definition of this
20 undertaking because, as you know, the undertaking to a
21 certain extent can be amended under the powers of the
22 Board, if that is the way it wasn't framed in the first
23 instance.

24 And I don't want to get into the impact
25 of the Hydro court decision on the ability of the

1 proponent to describe the undertaking in the terms that
2 the proponent wants to, but you must remember that as I
3 read a corollary of that decision, the alternative
4 methods of carrying out that undertaking can be
5 expanded by the Board or other parties into areas even
6 not contemplated by the proponent.

7 MR. FREIDIN: That is what the Joint
8 Board case in relation to eastern Hydro said.

9 THE CHAIRMAN: That's right. Now, with
10 great deference - and I say this with great deference
11 to the courts in that decision - I think that some of
12 the implications of what the environmental assessment
13 process constitutes is an area that not everyone has
14 spent a lot of time addressing their minds to, and it's
15 a very complex piece of legislation - and I'm not
16 suggesting for a moment that the courts are wrong -
17 what I am suggesting is, is that all of the
18 implications of that particular court decision may not
19 have been fully decided in that decision.

20 It would not surprise me in the least,
21 quite frankly, if the courts were forced at some stage
22 to re-visit that area, perhaps in a different context.

23 MR. FREIDIN: Okay. Mr. Chairman, if I
24 might make the following suggestion. It seems to me
25 that there is a two-step process which is confronting

1 us, but perhaps we only need deal with one.

2 If the Board decides or agrees with my
3 submission that the licensing is exempt, then there is
4 no need to visit the second issue that you have raised.
5 Based on your comments, if licensing is exempt, then we
6 don't have to visit the situation as to whether you can
7 get into looking at licensing being an alternative
8 method.

9 THE CHAIRMAN: Not licensing per se, if
10 licensing is exempt, but it begs the question as to
11 what reasonable alternatives should have been put
12 forward by the proponent to the planning process or
13 what reasonable alternatives can be put forward by
14 intervenors.

15 MR. FREIDIN: But you do not have to put
16 forward obviously, in my submission, an alternative to
17 the method of licensing if licensing itself in that
18 process of licensing is exempt.

19 THE CHAIRMAN: That is licensing.

20 MR. FREIDIN: Right. Well, I say that
21 because that's the issue that we are dealing with,
22 that's the issue which is concerning me, that is the
23 issue which is raised, and I...

24 THE CHAIRMAN: I know, but I want to go a
25 little bit further than that, Mr. Freidin, because down

1 the road, I may be wrong, I suspect that certain
2 intervenors are going to put forward alternatives to
3 the planning process that you have put forward and
4 those alternatives to the planning process, although
5 related to the activities, may not be dealing per se
6 with the specific activities; and if the plan itself,
7 the process as well as the activities are before the
8 Board as part of the undertaking it makes, I think,
9 some difference as to what range of alternatives the
10 Board can properly look at.

11 So I think it's a question we should be
12 determining at this point.

13 MR. FREIDIN: One moment, please.

14 THE CHAIRMAN: And I may be wrong, Mr.
15 Lindgren, but I think at some stage we had an
16 indication from Ms. Swenarchuk that she intended to put
17 forward different aspects of planning processes which
18 have been used in other jurisdictions for example which
19 may not approximate what the Ministry has put forward.

20 MR. LINDGREN: That is absolutely
21 correct, Mr. Chairman.

22 MR. FREIDIN: Are you concerned somehow
23 that the Ministry would say you can't do that?

24 THE CHAIRMAN: I'm concerned that the
25 Ministry may be taking a very narrow approach to what

1 the undertaking is by saying it is really only dealing
2 with the four specific activities, period, and that you
3 can't look at the framework within which those
4 activities are delivered or implemented.

5 MR. FREIDIN: But I guess -- I mean,
6 dealing with what we dealt with to date in terms of
7 planning process, is the situation that you envisage
8 and that gives you concern one that would involve the
9 Ministry saying -- somebody gets up and says: We don't
10 like your planning process, we think you should plan
11 these activities differently, you should have a
12 different public consultation, you should have
13 different kinds of notices, that sort of thing; that
14 somehow that submission would be the subject matter of
15 an objection by the proponent?

16 THE CHAIRMAN: No.

17 MR. FREIDIN: I say that, Mr. Chairman,
18 because if that is the concern, and the proponent said
19 no, they could do that, would that dissipate the
20 concern you have got? I don't know.

21 THE CHAIRMAN: No, it wouldn't dissipate
22 the concern I have got because that is what I would
23 expect the Ministry to do.

24 MR. FREIDIN: Which one?

25 THE CHAIRMAN: To allow that kind of

1 alternatives to be put forward to the Board and it
2 should be within the realm of our consideration. But
3 that, in my view, just gives authority to the fact that
4 that's the way the undertaking should be described.

5 MR. FREIDIN: But, Mr. Chairman, with
6 respect, you are describing -- I hear you describing an
7 interest in having a legal question which is of
8 interest to the Board and has been for some time
9 perhaps being dealt with here but in circumstances
10 where it may not be necessary.

11 That is what I hear you saying, and if
12 I'm right, then I question whether we need to spend the
13 legal time and the time of all the parties and the
14 Board in dealing with that matter.

15 THE CHAIRMAN: Well I think, Mr. Freidin,
16 with respect, there has been some confusion from day
17 one in this hearing: What is the undertaking. The
18 fact we are even having this discussion at this point
19 in time, I think, is some evidence of that.

20 I think the Board is entitled to know
21 clearly what is in front of it and are we just looking
22 at the four activities with this background pile of
23 evidence concerning the planning process under which
24 those activities will be conducted, or are we looking
25 at as the undertaking, the planning process in relation

1 to those four activities; not in relation necessarily
2 to activities going beyond those four activities and
3 that, I think we had an earlier argument over the
4 forest estate versus timber management at the outset.

5 But is not what is before us the planning
6 process in relation to the four activities? And I
7 think it is. I think that is your justification for a
8 class environmental assessment, I think that is the
9 statutory underpinning for a Class EA in this context.

10 And what I heard you say this morning
11 was: No, it's not that, you are relying on the first
12 part of the definition of undertaking in here, meaning
13 an enterprise or activities and listed just the four.

14 MR. FREIDIN: Could I have one moment,
15 please.

16 ---Discussion off the record

17 MR. FREIDIN: My colleagues believe they
18 understand the question and the concern.

19 THE CHAIRMAN: I thought we might even
20 get an answer.

21 MR. FREIDIN: You will not get an answer,
22 if you allow me to keep my mouth shut. I'm not one to
23 do that all the time, but I would like to do that now.
24 I am really not sure whether I can even say I'm going
25 to come back and deal with this matter immediately

1 after lunch.

2 It might be worth -- you may want to hear
3 some comment from the other parties, the other parties
4 may want to refrain from making comment and maybe we
5 can sit down and discuss the way to approach this. But
6 I can't speak for them and I think I have got nothing
7 else to say.

8 THE CHAIRMAN: Well, listen. Again,
9 maybe after lunch we can get on with the evidence, but
10 this is a question that I think that the Ministry of
11 Natural Resources should put forward their position,
12 the Board would like the comment of the Ministry of the
13 Environment on what the Board has put forward for
14 discussion and the Ministry's position in response
15 thereto, and any of the other parties who wish to
16 comment on just this aspect--

17 MR. FREIDIN: And, Mr. Chairman...

18 THE CHAIRMAN: --will have an opportunity
19 to do so.

20 Do you have something to say, Ms.
21 Seaborn?

22 MS. SEABORN: It's hard to know where to
23 begin, Mr. Chairman. I will just make one quick
24 comment that perhaps will expedite matters.

25 I have about five or ten minutes' worth

1 of submissions that I would like to make to the Board
2 addressing some of the specific questions that you
3 raised this morning.

4 At the outset, in terms of the question
5 of what is the definition of the undertaking and what
6 is being put forward before the Board for approval, I
7 don't think that that question necessarily has to be
8 answered definitively for the Board to deal with the
9 Notice of Motion that is in front of you. So in terms
10 of expediting the evidence and moving along with
11 things, it's our position that that question does not
12 need to be definitively decided.

13 Having said that, I would like perhaps
14 after the lunch break to make some comments in relation
15 to your questions. And the other way we could deal
16 with it, is if the Board wants to hear further comment
17 from parties, we do have another motion day next week.
18 It may be that some of these issues can be dealt with
19 at that time.

20 There are also other parties who may be
21 interested in this question, which is somewhat
22 different than what has been put forward in the motion,
23 and I think that everyone should have an opportunity to
24 respond.

25 THE CHAIRMAN: Mr. Lindgren, do you have

1 anything to say?

2 MR. LINDGREN: Mr. Chairman, if Mr.
3 Freidin requires additional time to prepare submissions
4 on this issue, then I'm certainly content to agree to
5 that.

6 I certainly would like to speak to this
7 issue. We do have serious concern about the
8 undertaking, what is or what is not before this Board,
9 and I think that goes towards the alternatives that can
10 be presented to the witnesses in Panel 17. So I think
11 that we should hear from the Ministry prior to
12 cross-examination on that issue.

13 And Ms. Seaborn has indicated she would
14 like to speak briefly to this issue when we return from
15 the lunch break. I would prefer to hear the position
16 of the Ministry of Natural Resources prior to my
17 submissions; in other words, how can I comment on their
18 position until I hear it.

19 THE CHAIRMAN: Well, it's not a chicken
20 and egg thing in this instance. It is your undertaking
21 Mr. Freidin, or that of your client. I think you
22 should have the opportunity to respond to the Board's
23 concerns in terms of what definition you were
24 utilizing; that is No. 1.

25 No. 2, it's the Ministry of the

1 Environment's legislation so to speak in terms of they
2 have a vested interest in how this legislation is
3 interpreted, so do other parties; and, of course, so
4 does the Board. And so we would like at least the
5 views of the Ministry of the Environment, as well as
6 the other parties on this issue, because ultimately we
7 are going to have to decide what the scope should be in
8 terms of canvassing alternatives and this will become
9 more important and may have a very large impact in
10 terms of the amount of evidence that comes in vis-a-vis
11 the intervenors' cases.

12 And I think it is incumbent upon us to
13 make a decision on this so that we all know, prior to
14 the intervenors starting their cases and prior to the
15 industry starting its case, what is the undertaking
16 that is before us. And if it does include the planning
17 process in relation to the activities, there may be
18 different ramifications as to alternatives. I'm not
19 saying there will be, but there may be. So that is
20 part of the concern that the Board has.

21 Also, if it is not a plan or program or
22 proposal that is before us, then on what basis are you
23 justifying the class environmental assessment approach
24 in terms of the statute?

25 Well, I think it's time for lunch. Does

1 that clarify what we wanted?

2 MR. FREIDIN: I think so, and I will
3 speak with Ms. Seaborn to see what the submissions were
4 that she wanted to make. Maybe they are still
5 appropriately dealt with or made before I comment on
6 the question, but I will speak to her.

7 THE CHAIRMAN: Okay. We will break until
8 2:30.

9 MS. BLASTORAH: Mr. Chairman, just a
10 point of clarification. Are we expected to be starting
11 the evidence of Panel 17 at some point shortly after
12 lunch, because I will have to round up the witnesses if
13 that is the case.

14 THE CHAIRMAN: Well, it's difficult
15 because we are going into Panel 17 and I don't know
16 what to say, in the sense that we have heard a lot of
17 submissions concerning the question (a) about the
18 exemption, Section 9, et cetera, as well as all of the
19 other submissions, and in order for us to rule upon the
20 motion, we are going to have to consider some of that
21 material relatively carefully.

22 By the same token, it impacts directly on
23 the cross-examinations of this panel. It may be that
24 we can hear the direct evidence and then we will just
25 have to render a decision on this motion before we

1 enter upon the cross-examinations.

2 So I'm not saying that we couldn't embark
3 upon the direct examination, I think we could without
4 prejudicing anybody, but I don't think we can just come
5 back after listening to the amount of material we have
6 listened to and give you a decision.

7 What I think we may be able to do later
8 on when we've had a chance to consider it, is indicate
9 what our disposition of the motion will be, but follow
10 it with written reasons. I think it's the type of
11 motion that requires some thought in the reasons. We
12 may be able to reach a conclusion, but we will probably
13 need a little bit of time to provide the reasons.

14 MR. FREIDIN: Well, as I understand, Ms.
15 Seaborn, there are still some submissions she believes
16 are appropriately made which may take ten minutes after
17 the break, and assuming that is the case, I think we
18 will probably round up our witnesses and start and try
19 to get into the evidence-in-chief and then we will, at
20 the end of that, decide how we are going to deal with
21 the motion and what ramifications that will have for
22 cross, reply evidence perhaps, et cetera.

23 MR. LINDGREN: Mr. Chairman, do I
24 understand Mr. Freidin to say that he will be giving us
25 his position as to what the undertaking is at the

1 conclusion of the Panel 17 chief?

2 MR. FREIDIN: I don't know. I'm going to
3 give it to you as soon as I can, but I tell you, it's
4 not an easy matter and I'm not going to give you an
5 unconsidered opinion.

6 THE CHAIRMAN: Fair enough. Mr.
7 Colborne, were you going to say something?

8 MR. COLBORNE: I wasn't sure but I will
9 since you asked. Is it possible for Ms. Seaborn to
10 have her ten minutes now, because I have to leave and
11 and that is sort of the end of the argument. It would
12 help me to hear it all.

13 THE CHAIRMAN: Okay, that sounds
14 reasonable.

15 MS. SEABORN: Mr. Chairman, if the Board
16 could have in front of it Exhibit 5 which is the
17 Government Review and Exhibit 4 which is the Class
18 Environmental Assessment.

19 Mr. Chairman, I am going to be primarily
20 addressing the second issue that you raised this
21 morning, and I repeat my submissions of a few minutes
22 ago, that I don't think that a determination of this
23 issue is necessary in any event for the Board to rule
24 on the Notice of Motion that is in front of it today.

25 I would like to start by drawing to your

1 attention some statements made by the Ministry of
2 Natural Resources in the Class EA Document and then I
3 will go into some statements that were made by the
4 Minister of the Environment in the Government Review
5 and, hopefully through these statements, I can try and
6 put this issue of what is the undertaking in some sort
7 of context.

8 If you could turn first to page 14 of the
9 Class Environmental Assessment. And, Mr. Chairman,
10 there are two page 14s in mine, I'm referring to the
11 second page 14 that is contained in the actual EA
12 rather than the summary of the EA.

13 THE CHAIRMAN: I have just got the big
14 one.

15 MR. CASSIDY: Well, there is a summary at
16 the very beginning and she is saying, go past that to
17 the right page.

18 MR. FREIDIN: We are not in the summary.

19 THE CHAIRMAN: Okay.

20 MS. SEABORN: If you could go to, it's
21 called: Part I, The Undertaking, and page 14 there is
22 and Item 5 at the top of the page that's called: An
23 Class Environmental Assessment Approach.

24 Now, Section 5(1) says that:

25 "Interpretations of the Environmental

1 Assessment Act have provided for the use
2 of a class environmental assessment for
3 common sets of activities. This approach
4 is predicated on the basis that an
5 acceptable planning process is developed
6 in the Class Environmental Assessment for
7 application whenever and wherever the
8 undertaking is carried out."

9 And then at lines 12 and 13 it says:

10 "Timber management is well suited to this
11 approach because it involves a common set
12 of activities wherever practised."

13 And if you go over the page and look at
14 page 16 of the Class Environmental Assessment,
15 beginning at line 3, it states:

16 "Furthermore, MNR takes the position that
17 the planning process outlined in this
18 Class Environmental Assessment ensures
19 that adequate protection of the
20 environment is achieved."

21 Now, the proponent has made it clear, in
22 our submission, from the outset that it is only going
23 to carry out the four activities of harvest, access,
24 renewal and maintenance in accordance with an approved
25 planning process, and --

1 THE CHAIRMAN: Approved by who?

2 MS. SEABORN: By the Board.

3 THE CHAIRMAN: So the planning process,
4 in your view, is before the Board for approval?

5 MS. SEABORN: The planning process is
6 before the Board for approval, however, that is not to
7 say that the planning process must fall within the
8 definition of undertaking in Section 1 of the Act. In
9 my view, those are two distinct things.

10 If I could just continue, I will come
11 back to that.

12 THE CHAIRMAN: All right.

13 MS. SEABORN: In our view, the approval
14 that is contemplated by MNR itself includes both the
15 four activities and the planning process. Now, whether
16 or not the definition of the undertaking under Section
17 1(o) of the Act is limited to the four activities or
18 includes the four activities and the planning process;
19 in our submission, that doesn't change the fact that
20 whatever approval comes out of this approval is going
21 to relate to both the activities and the planning
22 process.

23 And in this regard I would like to direct
24 the Board to the Government Review which is Exhibit 5.
25 Now, if you turn to page 16 of Exhibit 5 you will see

1 under Section 2.5 a heading: "The Class EA Approach.

2 THE CHAIRMAN: Sorry, 16?

3 MS. SEABORN: Page 16 of the Government
4 Review which is Exhibit 5. One of the sections I
5 wanted to bring to the Board's attention was Section 41
6 of the Environmental Assessment Act.

7 Section 41 - I won't read it, it is set
8 out in full on page 16 of the Government Review - and
9 the commentary by the Ministry of the Environment after
10 that section is that:

11 "The use of Class EAs has developed over
12 the years according to the needs of
13 proponents. The EA Branch has developed
14 an approach to the review and approval
15 of Class EAs based on the requirements
16 of Section 5(3) of the EA Act. The EA
17 itself is subject to the formal review
18 and approval process under the Act and
19 normally defines an environmentally based
20 planning procedure for the future
21 planning and approval of individual
22 projects."

23 And the last reference to this topic that
24 I would like to bring to the Board's attention appears
25 at page 18 of the Government Review under Part III,

1 Analysis of Environmental Assessment, and it states:

2 "The analysis of the Class Environmental
3 Assessment for Timber Management on Crown
4 Lands in Ontario is divided into two
5 components: First, the Class EA Document
6 itself; and, second, the planning process
7 to be utilized for the production of
8 future timber management plans. Both the
9 document and the future planning process
10 must meet the requirements of the EA Act
11 as there are really two levels of
12 planning involved in a Class EA; the
13 present and the future."

14 THE CHAIRMAN: All right. Why possibly
15 would it have to meet the requirements of the Act if it
16 was not an undertaking subject to the Act?

17 How can you make the statement that both
18 the planning process and the activities must meet the
19 full requirements of the EA Act, if all that is subject
20 to the EA Act is an undertaking which is subject to
21 that Act?

22 MS. SEABORN: Because the Ministry has
23 taken the position that the only way that the
24 undertaking - and they have defined it as the four
25 activities - can be implemented is through a common

1 planning process. The activities need to somehow be
2 carried out and it is the planning process that
3 facilitates the activities. And whether or not --

4 THE CHAIRMAN: Well, what do the words
5 then in the latter part of 1(o), what can they mean if
6 they don't refer to this kind of undertaking?

7 MS. SEABORN: They could very well refer
8 to this kind of undertaking. I am not excluding that
9 interpretation.

10 All I'm saying is that because the
11 proponent has chosen to, as you understand Mr.
12 Freidin's position, define the undertaking as the four
13 activities, that doesn't mean that there is any
14 difficulty in the Board approving a planning process as
15 well as the four activities.

16 And I guess my point is, Mr. Freidin
17 doesn't need to, say for example, amend his definition.
18 He doesn't need to amend his definition of the
19 undertaking in order for this Board to approve terms
20 and conditions.

21 THE CHAIRMAN: Okay. Let me ask it the
22 other way: Why wouldn't he?

23 MS. SEABORN: Well, I think Mr. Freidin
24 would have to answer that.

25 THE CHAIRMAN: Okay. No, but the

1 argument being is, if the Board must approve the
2 planning process as well as the four activities, if in
3 order to carry out the activities you must receive
4 planning process approval--

5 MS. SEABORN: Mm-hmm.

6 THE CHAIRMAN: --and that is the way at
7 least in the Ministry of the Environment's view that
8 you come under this Class EA approach, that is the only
9 way in which you can put forward a Class EA approach.

10 And since the Act in the definition
11 section contains the words or appears or purports to
12 contain words that encompass that very situation, it
13 relates a program or planning process to activities, or
14 an enterprise if it were a fixed facility; why doesn't
15 it make just common sense that that is the proper
16 description for the undertaking?

17 MS. SEABORN: It may very well make
18 common sense and, Mr. Chairman, I'm not disagreeing
19 with your submission, all I'm suggesting is that as
20 long as a proponent in a Class Environmental Assessment
21 situation is prepared to live with terms and conditions
22 that relate to the common planning process, then
23 regardless of how they define the undertaking we don't
24 have a difficulty, because the end result is that the
25 Board has the jurisdiction to impose terms and

1 conditions that relate to the planning process.

2 THE CHAIRMAN: Right, but I go the other
3 way, Ms. Seaborn. I would argue that if the proponent
4 doesn't enlarge the definition of 'undertaking' to
5 include the planning process, then how does the
6 Ministry obtain the authority to say you can't have a
7 Class EA unless you also have the plan approved?

8 In other words, you can't have it both
9 ways. If the proponent defines the undertaking to just
10 be the four activities, but the Ministry of the
11 Environment comes along and says: No, that Class EA
12 approach demands that it also include an approval of
13 the planning process in relation to the four
14 activities, how do you get the authority to do that,
15 when the proponent is saying to you on the other side:
16 But I'm not going to define the undertaking that way?

17 Because you go back to the fact that, in
18 my respectful view, the Ministry of the Environment is
19 also subject to the Act, and the only thing that is
20 brought within the purview of this statute is an
21 'undertaking' which is subject to the Act; i.e., a
22 proponent in the public sector.

23 And if the proponent is telling you: I'm
24 not going to define the undertaking in such a way that
25 includes the planning process, then I would argue that

1 maybe the Ministry of the Environment improperly has
2 reached the position that we can do nothing in terms of
3 approval except approve the plan along with the
4 activities.

5 MS. SEABORN: I think, Mr. Chairman, the
6 response would be really the position that was taken in
7 the Government Review which was done on the basis that
8 not only did the Class EA Document have to meet with
9 requirements of Section 5(3) but so did the planning
10 process that is described in that document, and
11 regardless of how -- regardless of how the proponent
12 defines that undertaking in terms of --

13 THE CHAIRMAN: But then you are in
14 conflict with that court case. Bring in the court
15 case. You have a Court of Appeal of Ontario decision
16 that says the proponent defines the undertaking, and if
17 the proponent is not willing to define the undertaking
18 in specific terms that the Ministry of the Environment
19 can support in terms of a Class EA approach, I think
20 you have got a problem.

21 MS. SEABORN: Mr. Chairman, I understand
22 completely what you are saying in terms of what you are
23 saying about the definition of plan, and certainly as I
24 said, it has always been our position that the planning
25 process is here for approval too. In our view that is

1 different than the proponent's ability to define the
2 undertaking.

3 Now, I think in terms of the argument
4 that is as far as I want to go today because I have not
5 had the benefit of hearing Mr. Freidin's reasons why he
6 limits his definition of the undertaking to the four
7 activities. And my next submission is, especially in
8 light of MNR's draft terms and conditions themselves,
9 which start off at the very beginning saying they are
10 seeking approval -- or, sorry, those aren't the words.

11 Under Schedule A, Planning Process, it
12 states:

13 "A timber management plan shall be
14 prepared for each forest management unit
15 in Ontario in accordance with MNR's
16 timber management planning process."

17 And then the Ministry sets out particular
18 terms and conditions that relate to plans.

19 THE CHAIRMAN: I know, and that is why
20 the Board finds it incredible at this stage to
21 contemplate that the planning process in addition to
22 the four named activities is not part of the
23 undertaking.

24 You know, I'm not saying that the
25 Ministry of Natural Resources hasn't got the legal

1 authority to define the undertaking. A court has told
2 us they do, but certainly that isn't, I think, the way
3 the Ministry of the Environment has approached this
4 whole matter nor, I would suggest, most of the parties
5 and, in fact, the Ministry itself.

6 MS. SEABORN: I agree with that,
7 Mr. Chairman.

8 I just wanted to make one quick comment
9 about alternatives. In our view, any intervenor can
10 put forward an alternative method. They can raise that
11 in front of the Board, they can put forward an
12 alternative method of carrying out the undertaking. In
13 that sense I have to agree with you, Mr. Chairman, that
14 when we are talking about alternative methods we had
15 always contemplated that you would be looking at
16 alternative methods of planning.

17 THE CHAIRMAN: That is MOE's position?

18 MS. SEABORN: That's correct. For
19 example, Mr. Lindgren commented earlier in response to
20 your questions that Forests for Tomorrow may very well
21 have a different planning process in mind and put that
22 forward in their terms and conditions.

23 In our view, that is an alternative
24 method the Board can consider and impose appropriate
25 terms and conditions. That is something different

1 than, as the Board is well aware, an alternative to the
2 undertaking.

3 In our view, changes in planning,
4 procedures, anything to do with planning and the four
5 activities that are put forward by other parties, as
6 long as that intervenor characterizes it as an
7 alternative method of carrying out the undertaking,
8 then this is fair game for a term and condition and for
9 argument in front of the Board at the end of the day.

10 THE CHAIRMAN: What about alternatives to
11 the undertaking?

12 MS. SEABORN: Again, any party can put
13 forward any alternative to the undertaking. The
14 distinction there is that if the Board is convinced
15 that an intervenor's alternative to the undertaking is
16 the way to proceed, then the Board has to reject the
17 proponent's application and, in our view, certainly in
18 terms of Panel 17 that is coming up, those are all the
19 areas that are fair game for cross-examination.

20 THE CHAIRMAN: What about a situation
21 where the proponent consents to an approval in
22 accordance with the alternative to the undertaking and
23 there were no notice problems involved?

24 MS. SEABORN: I'm not sure under the
25 current law whether the Board, even if the proponent

1 consents to an 'alternative to', that the Board can
2 approve that because the Board would not have done the
3 same level of -- would not have looked at alternatives
4 to that 'alternative to'--

5 THE CHAIRMAN: That certainly is the
6 argument.

7 MS. SEABORN: --prior to making its
8 decision. So I think the Board would have difficulty
9 even if the proponent consented to that.

10 MR. CASSIDY: Just so I can understand
11 where you are going on that, and I don't mean to
12 interrupt, is your thinking in that respect of
13 negotiation sessions that are coming up; was it in the
14 context of that possibility?

15 THE CHAIRMAN: No, no. It's just sort of
16 finishing off her analysis of what the Board's
17 jurisdiction was with respect to alternative methods,
18 and her comment about the same necessarily wouldn't
19 apply to 'alternatives to'.

20 MS. SEABORN: And the reason why I wanted
21 to raise that, Mr. Chairman, is in our view a different
22 licensing scheme could be characterized as an
23 alternative method of carrying out the undertaking.

24 THE CHAIRMAN: And that all goes back to
25 the exemption question, period.

1 MS. SEABORN: That's right. And I'm not
2 going to repeat my arguments here on that but, in our
3 view, that does go back to the exemption argument; and
4 that proposition, I would say, is sound regardless of
5 the definition of undertaking.

6 Again, as I said at the outset, I don't
7 think that question needs to be determined. I think
8 that in terms of licensing that is determined on the
9 exemption argument.

10 If the Board finds that licensing is not
11 exempt from the Act, then the next step if someone
12 wants to put forward a different licensing scheme is
13 for them to characterize it as an alternative method of
14 carrying out the undertaking. If they are successful
15 in that characterization in front of the Board, the
16 Board can impose a term and condition in that regard.

17 As I said, Mr. Chairman, if the Board
18 feels they would like to deal with this matter further,
19 I would suggest that there be notice to parties and
20 perhaps we deal with it next week when we are dealing
21 with the purpose motion, and obviously that would be
22 contingent on when Mr. Freidin wants to address the
23 Board on his definition of the undertaking.

24 MR. FREIDIN: I want to go home.

25 THE CHAIRMAN: If we are going to deal

1 with it next week on that basis, we are going to
2 obviously advise the parties on the record, so I guess
3 it is of some importance as to when you will be back
4 with your position.

5 MR. FREIDIN: Can I address you on that
6 this afternoon?

7 THE CHAIRMAN: Yes. Ladies and
8 gentlemen --

9 MR. FREIDIN: What are we doing when we
10 come back, are we going to go ahead with Panel 17?

11 THE CHAIRMAN: I think we'll start with
12 Panel 17 direct. Three o'clock.

13 MR. FREIDIN: Three o'clock. Thank you,
14 Mr. Chairman.

15 ---Luncheon recess taken at 1:23 p.m.

16 ---On resuming at 3:07 p.m.

17 THE CHAIRMAN: Thank you. Be seated.

18 MS. BLASTORAH: Mr. Chairman, before we
19 begin Panel 17, I think Mr. Lindgren had one or two
20 procedural matters he wanted to raise with you.

21 MR. LINDGREN: This should only take a
22 moment, Mr. Chairman, and it relates to a direction
23 that you gave this morning with respect to the
24 clearcutting evidence. You have indicated that the
25 statement of issues are due next week on January 17th

1 and that there will be a scoping session on that
2 evidence on January 22nd.

3 Now, we have spoken with some of my
4 friends and I believe there was a general understanding
5 that for this evidence there was not going to be a
6 statement of issues and there was not going to be a
7 scoping session largely because it's not a witness
8 statement per se, but simply an answer to an
9 interrogatory.

10 So that being the general understanding
11 of the parties, I would ask you to perhaps reconsider
12 the direction that statement of issues be filed.

13 THE CHAIRMAN: So you are not going to
14 cross-examine?

15 MR. LINDGREN: Well, we are going to
16 cross-examine, but we are wondering if a statement of
17 issues is a prerequisite because it's not a witness
18 statement per se, it's just an answer to an
19 interrogatory.

20 THE CHAIRMAN: Okay. But it's not
21 necessarily what we call it, as opposed to: Can we
22 somehow focus upon the issues that are going to be the
23 subject of the oral part of the hearing.

24 In other words, the purpose of the
25 scoping is to try and define the issues as to the ones

1 we are going to spend the time on and, in that light,
2 it may be helpful for both the proponent in terms of
3 what they call in direct, and the Board and the other
4 parties in terms of what areas they are going to
5 concentrate on in cross, to know what they are.

6 I mean, that is the purpose of scoping.
7 We don't care much, you know, about the argument
8 whether or not it should be scoping because it's not
9 technically a witness statement. It is another chunk
10 of evidence that is going to be brought in through
11 witnesses, and I take it that no party is going to give
12 up their right to cross on it, so...

13 MR. LINDGREN: I thought I would just
14 raise that concern in light of the general
15 understanding that the parties had prior to this
16 morning.

17 THE CHAIRMAN: Well, we just don't want
18 to spend any more time than we have to on the whole
19 area. All of the parties have had some time now to
20 discuss it in detail, trying to reach agreement in the
21 first instance, and what we would like to find out is
22 where you still disagree.

23 MR. LINDGREN: Very well, Mr. Chairman.
24 Perhaps I could just raise the second point of
25 clarification.

1 In the letter dated December 21st, the
2 Ministry distributed new AOC and roads documentation
3 and there is an indication that Mr. Bisschop, Mr.
4 Kennedy, Mr. McNicol who will speaking to the evidence
5 in the clearcutting panel, will also be speaking to
6 this evidence.

7 Is a statement of issues required for
8 this evidence and will it be scoped?

9 THE CHAIRMAN: We haven't seen that; have
10 we?

11 MR. FREIDIN: Yes, Mr. Chairman.

12 THE CHAIRMAN: Have we.

13 THE CHAIRMAN: In the letter that I sent
14 to the parties, copies of which went to the Board
15 enclosing a copy of the materials in relation to area
16 of concern planning, you know, the standard provincial
17 form and the bulletin that we referred to is our way of
18 addressing your concern on area of concern planning
19 documentation.

20 In the letter I indicated to the parties
21 that rather than calling that additional evidence on
22 area of concern through Mr. Bisschop on this panel,
23 that I was going to lead that evidence during the panel
24 on clearcuts. The reasoning in the letter being; this
25 will be the reasoning: Mr. McNicol and Mr. Kennedy,

1 both of whom are on the panel in relation to clearcuts,
2 were intimately involved in the preparation of that
3 material and although they will not be leading any
4 evidence in relation to that matter, they will be
5 available for cross-examination.

6 So I thought that would be a better way
7 of dealing with it and that's what gives rise to that
8 letter.

9 MR. LINDGREN: I think that is an
10 advisable course of action, but my question is: Is a
11 statement of issues required and will it be scoped?

12 THE CHAIRMAN: Well, is that going to
13 take very long, Mr. Freidin, that portion of the
14 evidence?

15 MR. FREIDIN: No, I don't believe so. I
16 think the evidence on clearcut will last - what do you
17 think, Mr. Bisschop - 15, 20 minutes?

18 MR. BISSCHOP: (Nodding affirmatively)

19 MR. FREIDIN: Give us half an hour.

20 THE CHAIRMAN: Well, then in that light
21 it doesn't appear that it's going to be lengthy in any
22 event, so let's skip the scoping exercise on that.

23 MR. LINDGREN: Okay. Thank you, Mr.
24 Chairman.

25 THE CHAIRMAN: Mr. Freidin, while we have

1 you, how long do you think it will take to lead the
2 clearcut evidence?

3 MR. FREIDIN: I have no idea. Ms. Murphy
4 is dealing with that matter and I had absolutely no
5 involvement in it and there is no one here who can
6 assist me at the moment.

7 THE CHAIRMAN: Okay.

8 MS. BLASTORAH: Mr. Chairman, I would
9 like to begin by filing a few exhibits, and I have
10 taken the liberty of preparing the list of exhibits we
11 will be filing, but since I didn't know what was going
12 to be filed on the motion I haven't put any exhibit
13 numbers on them.

14 I believe we left off the last time, an
15 exhibit was marked at Exhibit 983; am I correct in
16 that?

17 THE CHAIRMAN: Yes.

18 MS. BLASTORAH: So this would be 984.

19 THE CHAIRMAN: Very well.

20 MS. BLASTORAH: Okay. So the first
21 exhibit then, and perhaps what I will do is take the
22 liberty of passing out these exhibits so that parties
23 can mark the exhibit numbers as we go along and then I
24 will distribute everything at the end.

25 MR. CASSIDY: How many exhibits are

1 there?

2 MS. BLASTORAH: Seven. Sorry about that.

3 THE CHAIRMAN: I'm not sure we filed the
4 witness statement.

5 MS. BLASTORAH: No, that is the first
6 one, Mr. Chairman, and perhaps I will provide each of
7 the members of the Board with one of these lists and
8 then I will bring up all the exhibits at the end.

9 MR. CASSIDY: There is a couple of errata
10 letters here that could be filed as separate exhibits.

11 MS. BLASTORAH: I do have that. I think
12 Mr. Cassidy is looking at the numbers.

13 MS. BLASTORAH: I suppose this will act
14 as an incentive for no one to file anything during
15 cross-examination of Panel 17.

16 The first exhibit then will be Exhibit
17 984, the Statement of Evidence for Panel 17.

18 ---EXHIBIT NO. 984: Witness Statement for Panel 17.

19 MS. BLASTORAH: Next will be a copy of a
20 letter from myself dated January 5th, 1989 to the EA
21 Board and all the full-time parties with regard to
22 errata in the statement of evidence and one of the
23 interrogatories. And I have four copies of that for
24 the Board and to file it as an exhibit. I didn't feel
25 it was necessary to provide further copies to the

1 parties.

2 THE CHAIRMAN: Okay. Exhibit 985.

3 MS. BLASTORAH: Oh, I am sorry. And I
4 just realized I put January 5th, 1989; it should be
5 1990, and that would be Exhibit 985.

6 Thank you, Mr. Chairman.

7 THE CHAIRMAN: Yes.

8 ---EXHIBIT NO. 985: Copy of letter dated January 5,
9 1990 from C. Blastorah to EAB and
all full-time parties re: errata.

10 MS. BLASTORAH: The next exhibit will be
11 a package of interrogatories submitted by OFAH in
12 relation to Panel 17, and I have taken the liberty of
13 putting a sheet on the front of that package listing
14 the numbers of the exhibits that are included in that.

15 THE CHAIRMAN: 986.

16 ---EXHIBIT NO. 986: OFAH package of interrogatories
17 re: Panel 17 with covering page.

18 MS. BLASTORAH: The next exhibit will be
19 a package of overheads relating to the evidence of Mr.
20 Bisschop, and I have included on the list you have the
21 titles of those two overheads.

22 THE CHAIRMAN: Okay. That will be 987.

23 ---EXHIBIT NO. 987: Hard copies of overheads re:
24 evidence of Al Bisschop
(Panel 17).

25 MS. BLASTORAH: Next will be a package of

1 overheads relating to the evidence of Mr. Duncanson.
2 And, again, I have listed those, except for there is a
3 package of, I believe it's nine overheads, that relate
4 to the oral evidence Mr. Duncanson will be giving and
5 the first item listed there Overheads re: recycling is
6 a package.

7 THE CHAIRMAN: Okay 988.

8 ---EXHIBIT NO. 988: Hard copies of overheads re:
9 evidence of John Duncanson
 (Panel 17).

10 MS. BLASTORAH: The next exhibit will be
11 Policy No. AF 03.01.01 and entitled: Forest Fire
12 management Policy for Ontario, issued March 8, 1989.

13 THE CHAIRMAN: Could you just run by the
14 number again?

15 MS. BLASTORAH: I'm sorry, it's on the
16 sheet, Mr. Chairman.

17 THE CHAIRMAN: Oh, okay.

18 MS. BLASTORAH: And I would just point
19 out to the Board that this is a new version of a policy
20 that was included in its entirety in the witness
21 statement for Panel 11.

22 The predecessor to that policy was in the
23 Panel 11 statement of evidence. I haven't felt it was
24 necessary to provide copies of that or to ask people to
25 have the earlier policy here with them because the

1 parts we will be referring to have not changed in the
2 new version.

3 THE CHAIRMAN: That is 989.

4 ---EXHIBIT NO. 989: Policy No. AF 03.01.01 entitled:
5 Forest Fire Management Policy for
Ontario, issued March 8, 1989.

6 MS. BLASTORAH: And lastly, a package of
7 overheads relating to the evidence of Mr. Clark and,
8 again, they are listed on the sheet provided.

9 THE CHAIRMAN: 990. Ten to go.

10 ---EXHIBIT NO. 990: Hard copies of overheads re:
11 evidence of Cam Clark (Panel 17).

12 MR. CASSIDY: What's this package
13 business, it's already frustrating?

14 MS. BLASTORAH: Well, we did consider
15 marking them all as one package, but we didn't do that.

16 So perhaps I will just bring those up to
17 the Board now. (handed)

18 Mr. Chairman, I will just point out that
19 in relation to Exhibit 988, which is Mr. Duncanson's
20 overheads, we have stapled the second two of those
21 overheads, the update of Table 3 and update of Table 4
22 separately because you may wish to refer to them in
23 conjunction with the other package of overheads.

24 THE CHAIRMAN: I think we have to swear
25 Mr. Duncanson. Have you been sworn?

1 MS. BLASTORAH: Mr. Duncanson was here in
2 Panel 5.

3 THE CHAIRMAN: Right.

4 MS. BLASTORAH: And I will run through
5 all of the qualifications of all the panel members. I
6 have extracted them from previous evidence just to
7 refresh the memory of the Board.

8 ---Discussion off the record

9 THE CHAIRMAN: Ladies and gentlemen, we
10 are going to mark the second set of Mr. Duncanson's
11 overheads Table 3 as 988A.

12 MS. BLASTORAH: It's Table 3 and Table 4,
13 there is two pages there, Mr. Chairman.

14 THE CHAIRMAN: Right.

15 MS. BLASTORAH: So it's the second two
16 overheads listed under the heading: Overheads.

17 THE CHAIRMAN: Okay.

18 ---EXHIBIT NO.988A: Table 3 and 4 re: evidence of
19 John Duncanson (Panel 17).

20 MS. BLASTORAH: And, Mr. Chairman, just
21 for the assistance of the Board, I thought I would run
22 through the qualifications of the witnesses. They are
23 all previously qualified and sworn, but it has been
24 some time since some of them have appeared before the
25 Board.

1 Mr. Duncanson was qualified in Panel 5 as
2 a financial analyst with specialty in the forest
3 products industry. Dr. Euler was qualified -- would it
4 assist the Board in taking notes if I gave you the
5 transcript references so you don't have to write it all
6 down?

7 THE CHAIRMAN: No, I think really we will
8 recall, once you just point it out, where they all fit
9 in, and we will go back necessarily.

10 MS. BLASTORAH: Okay. Dr. Euler, you may
11 recall, was qualified in Panel 10 as an expert in
12 wildlife habitat management including the following:
13 managing vegetation to produce wildlife habitat in the
14 boreal forest and the Great Lakes/St. Lawrence Forest,
15 data management systems in integrating wildlife habitat
16 and timber management, field inventory of wildlife
17 habitat, evaluation of wildlife habitat, and impacts of
18 fire on wildlife habitat.

19 Mr. Armson was qualified in Panel 2 as an
20 expert in forestry, silviculture and silvics.

21 Dr. Allin was qualified in Panel 10 as an
22 expert in fisheries biology and in water quality as it
23 affects aquatic life.

24 And Mr. Bisschop was qualified in Panel
25 15 as a professional forester and an expert in

1 environmental planning.

2 And I may have left out Mr. Clark,
3 although I have him on my list. Mr. Clark was
4 qualified in Panel 7 as an expert in resource
5 management.

6 I apologize for the omission, Mr. Clark.

7 THE CHAIRMAN: Very well.

8 JOHN ALLIN,
9 KENNETH ARMSON,
10 DAVID EULER,
11 ALBERT BISSCHOP,
12 CAMERON CLARK,
13 JOHN DUNCANSON, Recalled

14 MS. BLASTORAH: And I have very few
15 introductory remarks, Mr. Chairman.

16 I would just point out that all of the
17 witnesses you see before you will be dealing with the
18 evidence in Document No. 1 in the statement of evidence
19 which essentially addresses the issue of alternatives
20 to the undertaking. And Mr. Bisschop will be speaking
21 to Document No. 2 which deals with EA procedural
22 requirements.

23 And, as you probably are aware, we
24 originally indicated that we expected to be about one
25 half day leading the evidence in this panel. However,
we now expect to be slightly longer, perhaps about five
hours, the reason being we have attempted in preparing

1 our lead evidence to be responsive to issues raised not
2 only by the Board but by some of the other parties, and
3 that led us to prepare somewhat more direct evidence
4 than we had originally anticipated.

5 In particular, we have included some
6 fairly detailed information with regard to recycling
7 which was an issue raised during scoping and which we
8 felt seemed to be of particular interest to some of the
9 parties, and we thought would be of interest to the
10 Board, and Mr. Duncanson will be dealing with that.

11 MR. CASSIDY: Mr. Chairman, if I could
12 just jump in. And can I just have a moment to speak to
13 Ms. Blastorah.

14 ---Discussion off record.

15 MR. CASSIDY: Well, what we are talking
16 about is a letter dated June 30th, 1989 that Ms. Murphy
17 sent out, another errata letter to this panel, and I'm
18 just thinking that it should probably be filed as an
19 exhibit too.

20 MS. BLASTORAH: Mr. Chairman, I apologize
21 for the omission.

22 MR. CASSIDY: I don't mean this to be
23 cute, Mr. Chairman, it is an errata page that the Board
24 should be aware of.

25 MS. BLASTORAH: I apologize, again, for

1 the omission. I don't seem to have a copy of that and
2 I will have to provide that to the Board.

3 THE CHAIRMAN: Shall we give it a number
4 now? 985A.

5 MS. BLASTORAH: 985A, I think will be
6 appropriate.

7 THE CHAIRMAN: June 30th...?

8 MR. CASSIDY: Yes, 1989.

9 ---EXHIBIT NO. 985A: Copy of letter dated June 5, 1989
10 from Kate Murphy.

11 MR. CASSIDY: Perhaps I can speed the
12 process up and take this down to be photocopied, Mr.
13 Chairman.

14 MS. BLASTORAH: Thank you. And just for
15 the information of the Board, the exhibits which are
16 988A are actually an update, the second page of that is
17 an update, is the table which is on page 58. So it
18 wouldn't be necessary for the Board to have that before
19 them, I don't think, necessarily for the evidence this
20 morning, because we will be referring to the updated
21 information in the evidence-in-chief in any event.

22 THE CHAIRMAN: How under any
23 circumstances do you get to call this the morning?

24 MS. BLASTORAH: I guess I have lost track
25 of the day, Mr. Chairman. I guess yesterday seemed

1 like all part of today.

2 DIRECT EXAMINATION BY MS. BLASTORAH:

3 Q. Mr. Bisschop, I would like to begin
4 with you, and my first question is: What approach did
5 the Ministry of Natural Resources take to the
6 requirement for indentification of alternatives to the
7 undertaking?

8 MR. BISSCHOP: A. The approach that was
9 taken was that the Ministry looked at the purpose we
10 were trying to achieve in this environmental assessment
11 and we looked at alternative ways in which we could
12 achieve that purpose.

13 Obviously timber management, the
14 undertaking we are putting forward, is one way to
15 achieve the purpose, and we identified three additional
16 alternatives to which I would like to go into some
17 description on now.

18 In Exhibit 987, there are two pages which
19 should be treated as a package. The first is a
20 diagramatic representation of the 'alternatives to'.
21 The second page provides a very brief summary of key
22 assumptions related to those 'alternatives to'.

23 What I'm going to be explaining through
24 these two pages is essentially a summary of the
25 information provided on pages 25 to 34 of the statement

1 of evidence, Exhibit 984.

2 We think that it's advisable that
3 throughout the evidence of this panel related to
4 'alternatives to' that these two pages be kept at hand
5 because they are our attempt to simplify the discussion
6 of the 'alternatives to' and, in particular, the
7 visual, the graphic that we produced, which we have
8 also blown up and is behind me for purposes of
9 everyone's opportunity to see it, tries to very simply
10 portray the 'alternatives to'.

11 So if you look at the diagram and have
12 the page of the key assumptions adjacent to it, I will
13 briefly go through a description of the key assumptions
14 related to each of the alternatives.

15 And what I have done here is simply
16 extracted from the statement of evidence the key
17 assumptions for which something can be said about each
18 of the alternatives, so you can very quickly see the
19 relative difference between them.

20 MS. BLASTORAH: Mr. Chairman, you will
21 notice that Mr. Duncanson has just switched on the
22 overhead and the text page that you have, which is part
23 of the second page of Exhibit 987, is now on the
24 overhead.

25 Would you like the lights off so that you

1 can better see it?

2 THE CHAIRMAN: I think it's okay because
3 we have them in front of us as well, the tables.

4 MR. BISSCHOP: So I will be providing
5 some elaboration of this page and you may wish to make
6 some notes on this page as we go.

7 First of all, dealing with the table on
8 key assumptions, I think with respect to timber
9 management all of the matters which are listed there,
10 you have had obviously some explanation of it in the
11 evidence given to date.

12 We are talking about the four operations
13 of access, harvest, renewal and tending. When I talk
14 about protection for other values, what I'm talking
15 about is basically application of the various
16 guidelines, the manuals, et cetera in planning that
17 deal with other values.

18 The timber management planning process as
19 we described it in Panel 15 is applied under timber
20 management in its total obviously. Yield regulation is
21 by maximum allowable depletion. We would construct new
22 roads and maintain existing and new roads as required
23 for purposes of carrying out timber management. We are
24 assuming current levels of effort directed towards
25 forest fire protection, and we are assuming the market

1 situation as described in Panel 5.

2 Now, for most of these seven basic
3 criteria, or assumptions, if you will, there are
4 differences which I will explain for each of the other
5 alternatives.

6 One thing I would like to point out on
7 the diagramatic representation of the two is that we
8 represent the protection of other values through the
9 symbology of reserve and modified operations, the solid
10 line and the dotted line, to give an indication of how
11 prescriptions would address other values with reserves
12 and modified operations.

13 MS. BLASTORAH: And there is a note to
14 that to that effect, a legend, if you will, at the
15 bottom of that overhead.

16 MR. BISSCHOP: And for the remainder of
17 the area which is portrayed in shades of green, we are
18 trying to portray that there will be different kinds of
19 management effort directed at different species and
20 site conditions.

21 So there is management of the timber
22 resource in accordance with the silvicultural practices
23 that the Ministry carries out for the management of
24 various species and site conditions. That is important
25 in terms of how I will explain alternatives B and C

1 later.

2 Turning to alternative A, which on the
3 diagram is the first picture you see where we basically
4 portray the lake which is in blue and the white
5 background, that simply is a representation that under
6 that alternative there are no operations, it's the
7 'do-nothing', the 'null alternative'.

8 Obviously for the assumptions related to
9 protection of other values, application of the timber
10 management planning process and yield regulation, there
11 is nothing that applies.

12 With respect to roads, we are talking in
13 alternative A of very limited maintenance of existing
14 access roads on Crown lands. Because we would not be
15 carrying out any timber management activities, the
16 maintenance would relate to maintenance of roads for
17 other reasons than timber management activities.

18 There would be a reduced level of forest
19 fire protection directed primarily at protection of
20 life and property, not directed at the fire protection
21 for purposes of protection of the timber resource. And
22 in terms of markets, we assume Panel 5 markets continue
23 to apply.

24 Under alternative A we have described
25 that the source of supply for industry would be private

1 lands or import of raw material from outside of the
2 province.

3 Turning to alternative B which is
4 described as harvest without renewal with the
5 application of guidelines to protect other values, in
6 terms of the operations that are being carried out
7 under that alternative, we would only be carrying out
8 access and harvest operations.

9 MS. BLASTORAH: Q. Mr. Bisschop, before
10 you go on, I may have misheard you, but did you say the
11 activities would be harvest and renewal, or did I
12 mishear you?

13 MR. BISSCHOP: A. I'm not sure. The
14 activities are access and harvest.

15 Q. Thank you. That may be my mistake.

16 A. In terms of the subject of without
17 renewal, there was an interrogatory asked by Ontario
18 Federation of Anglers & Hunters which is Interrogatory
19 No. 6 in the package. It simply describes that by
20 without renewal we indicate that there would be no
21 human effort directed towards renewal of the forest.
22 There would be no artificial regeneration efforts, no
23 maintenance efforts, and also there would be no efforts
24 directed through modifying harvest operations as per
25 silvicultural guides, there would be no effort at all

1 directed towards renewal of the forest.

2 In terms of protection for other values,
3 we are assuming application of the guidelines, just as
4 in timber management. There is an interrogatory on
5 this question as well. Ontario Federation of Anglers &
6 Hunters - I'm returning to my Hydro case I think - that
7 deals with the subject of application of the
8 guidelines.

9 It's Interrogatory No. 18 in which we
10 describe that the guidelines would be applied insofar
11 as they relate to harvest. The difference is that, of
12 course, any actions that might be taken to minimize or
13 mitigate effects that would be done through renewal
14 efforts would not apply.

15 MS. BLASTORAH: And, again, Mr. Chairman,
16 that interrogatory is included in the package which is
17 Exhibit 986.

18 MR. BISSCHOP: In terms of the planning
19 requirements, we would apply the timber mangement
20 planning process as we have outlined in Panel 15 in
21 part only; in other words, it would deal with only
22 access and harvest operations, but it would include the
23 full area of concern planning requirements related to
24 those operations.

25 As in the case of timber mangement, yield

1 regulation would be by maximum allowable depletion. We
2 would construct new roads and maintain existing and new
3 roads as required. The roads would, of course, be
4 needed for shorter periods of time just dealing with
5 harvest only; there wouldn't be continued maintenace
6 for renewal efforts, but there would be continued
7 maintenance in accordance with the direction in the
8 access road guidelines.

9 We are assuming the current levels of
10 forest fire protection and, again, the markets as
11 explained in Panel 5.

12 Turning to the figure again, we portrayed
13 alternative B as being identical in terms of the
14 protection of other values in the figure. You'll see
15 that the areas related to reserves and modified
16 operations are identical to timber mangement, but the
17 background is completely red, which is meant to portray
18 that there is no renewal efforts and no human effort at
19 all directed towards renewal of the forest, either
20 through artificial efforts or through modifying harvest
21 operations.

22 Alternative C is described as the harvest
23 without renewal alternative, that also involves no
24 application of the guidelines to protect other values.
25 Again, we are referring to access and harvest

1 operations only with no efforts directed towards
2 renewal.

3 This alternative differs from B,
4 obviously, in that there would be no efforts directed
5 towards protection of other values through use of
6 guidelines. The timber mangement planning process
7 would be applied, again in part only, for access and
8 harvest operations, but there would be no area of
9 concern planning.

10 Yield regulation would be by maximum
11 allowable depletion, and we would construct new roads
12 and maintain existing and new roads for the duration of
13 harvest operations only. The difference here, as
14 compared to alternative B, is that we would not
15 continue maintenance as required under the access road
16 guidelines. We assume, again, current levels of fire
17 protection and markets as described in Panel 5.

18 On the figure it's a very simple
19 representation of alternative C; that is, a completely
20 red background. It indicates harvest and access
21 operations only, no renewal efforts.

22 One comment on alternative B which we've
23 described in the statement of evidence, is that under
24 that alternative over time - because we are not
25 practising renewal efforts and, in particular, we are

1 not renewing the conifer component of the forest, wood
2 supplies will decrease over time. That will mean that
3 as wood supply becomes tighter we will make increasing
4 efforts to minimize reserves by applying the guidelines
5 with a great deal more effort directed towards
6 application of the guidelines.

7 We'll still be making prescriptions that
8 conform with the flexibility provided in the
9 guidelines, but we will direct additional effort to
10 gathering the information that allows us to make
11 prescriptions that, if you will, are somewhat less
12 conservative but still within the bounds provided by
13 the guidelines.

14 For example, where there are options of
15 reserve and some modifications we would lean in the
16 direction of modifying operations. The key point here
17 is that the application of the guidelines themselves is
18 not less rigorous, rather, we would be doing a much
19 more rigorous application of the area of concern
20 planning process by making increased efforts at
21 gathering the information necessary to apply the
22 guidelines properly.

23 MS. BLASTORAH: Q. Mr. Bisschop, if I
24 could just ask you one question on a comment you made a
25 moment ago. You indicated under alternative B wood

1 supply would become tighter over time.

2 When you say 'wood supply' in that
3 context, what do you mean?

4 MR. BISSCHOP: A. I mean coniferous wood
5 supply.

6 Q. Thank you. Mr. Bisschop, my next
7 question is: In your opinion, are there other
8 reasonable alternatives which could have been
9 considered by the Ministry?

10 A. When we addressed this problem, there
11 were potentially a multitude of alternatives that could
12 have been defined, recognizing that one of the
13 alternatives we had to address was the 'do-nothing'
14 alternative, as required in any environmental
15 assessment. Theoretically there are a multitude of
16 possible alternatives which basically are combinations
17 or permutations of the alternatives that we have
18 described.

19 Q. And can you give me a few examples of
20 the kinds of things you are talking about?

21 A. Yes. One example could have been a
22 variation on the timber management alternative. For
23 example, we could have had an alternative of timber
24 management without the application of the guidelines,
25 and I think the easiest way to perhaps explain that is

1 if you were to take the green background of timber
2 management and put it into alternative C to replace the
3 red, that would give you an idea of what we are talking
4 about.

5 Q. And when you say 'without the
6 application of guidelines', which guidelines do you
7 mean?

8 A. I'm speaking to all of the guidelines
9 we have introduced - the fisheries guidelines, the
10 guidelines to protect the other values, as well as the
11 silvicultural guides to deal with management of the
12 timber resource.

13 Q. Are you indicating the silvicultural
14 guides would not apply under that potential
15 alternative?

16 A. They would apply, they are part of
17 timber management.

18 Q. And the guidelines then, when you
19 said guidelines, would not be applied under this
20 hypothetical alternative?

21 A. The guidelines that would not be
22 applied would be the guidelines for the protection of
23 other values. I apologize, I got mixed up myself.

24 THE CHAIRMAN: If the timber management
25 planning process is considered part of the undertaking,

1 is a variation to the planning process going to be
2 dealt with under alternatives, alternative methods of
3 carrying out the undertaking? Is that where you would
4 expect to look at alternatives to the planning process
5 that you put forward?

6 MR. BISSCHOP: Yes. The undertaking --
7 the preferred alternative to achieve the purpose is
8 timber management, is the way I would explain it. And
9 anyway, any alternative ways of planning timber
10 management would have to be considered as alternative
11 methods. That is how I would understand that, the
12 undertaking is still timber management.

13 MS. BLASTORAH: Q. Mr. Bisschop, did you
14 have any other alternatives or potential alternatives
15 that the Ministry might have considered?

16 MR. BISSCHOP: A. Another alternative we
17 could have considered would be a variation on
18 alternative B, for example, where we could have
19 considered applying the silvicultural guides insofar as
20 modifying harvest operations to encourage natural
21 regeneration.

22 We didn't consider that in alternative B.
23 We assumed the application of only the guidelines to
24 protect other values but not the application of the
25 silvicultural guides.

1 We could have looked at that possibility
2 to deal with modifying harvest operations for natural
3 regeneration purposes, but we felt that the differences
4 between that and alternative B, as it is anyway, would
5 be very minor. So it's really a permutation of
6 alternative B that is not very much different from
7 alternative B anyway.

8 In the evidence of Panel 10, Mr.
9 Greenwood and Mr. Hynard - in Panel 10 and 11 I
10 believe - we spoke to the subject of the extent to
11 which those modified harvest practices could be
12 employed anyway, and the extent is extremely limited in
13 Ontario, particularly because we are dealing with the
14 boreal forest in which modifying harvest operations to
15 encourage natural regeneration is fairly limited.

16 We felt that we had to, as any proponent
17 under the Act, draw the line somewhere on reasonable
18 alternatives to address this subject of 'alternatives
19 to' and the range of alternatives that we put forward
20 we believe is a reasonable range.

21 One comment I would like to make about
22 why alternative C is considered, is that many would say
23 that that is in fact the way timber management was
24 practised in Ontario at one time, perhaps as recently
25 as the 50s and 60s; and, therefore, it was felt to be

1 at least a reasonable alternative to consider because
2 we wouldn't have to make a lot of assumptions. We do
3 have a knowledge base about what the implications about
4 management by that alternative would be.

5 THE CHAIRMAN: Again, I don't know, maybe
6 it's just me, I'm having some difficulty. But why is
7 there really more than one -- than two 'alternatives
8 to' timber management in the first place, other than
9 not managing or managing through some planning process
10 the activities with everything else being effectively
11 an alternative way of doing it or method?

12 Either you are carrying out the
13 activities through some form of management or you are
14 not, and when you deal with the different forms of
15 management, aren't you looking at alternative methods
16 of managing? With all these variations that you are
17 getting into, would not those be alternative methods of
18 managing?

19 MR. BISSCHOP: I think, as I understand
20 you, Mr. Chairman, what you are saying is we have
21 alternative A, we have timber management or we have
22 alternative C as we portrayed here.

23 THE CHAIRMAN: Everything else is a
24 variation of how you either approach it with no
25 management whatsoever or you manage in some slightly

1 different manner which would be an alternative method
2 of managing.

3 MR. BISSCHOP: If you were to look in the
4 Class EA, the Class EA Document itself, you would in
5 fact see those three. You would see alternative A,
6 timber management and what is called alternative C.

7 We felt that we had to -- we had to
8 respond that in 1989 alternative C isn't a very
9 realistic consideration given the evolution of planning
10 and management to protect our values, so we introduced
11 alternative B to look at it within the context of a
12 range of reasonable alternatives.

13 But, in effect, you are right when you
14 say you do timber management, you look at 'do-nothing'
15 because that is a normal requirement under
16 environmental assessment, and you look at what I
17 characterize as no management as you have under
18 alternative C. We do say --

19 THE CHAIRMAN: You can have any infinite
20 number of varieties as to how you might manage it.

21 MR. BISSCHOP: That's right. We do say
22 that alternative B -- well, alternative B and C are, in
23 effect, no management.

24 THE CHAIRMAN: Okay.

25 MR. BISSCHOP: We simply introduced B to

1 recognize --

2 THE CHAIRMAN: If you characterize B in
3 that sense, that it approximates C in that it
4 effectively is no management as well, then I think it
5 captures what I think the range of alternatives are
6 with respect to 'alternatives to', and that is a whole
7 different question when we get to alternative methods.

8 MR. BISSCHOP: And I'm sure Mr. Armson,
9 in particular, would be the first to support me as well
10 in agreeing with you; that is how he characterized
11 alternative B as it relates to the timber resource in
12 particular.

13 MS. BLASTORAH: Q. Mr. Bisschop, just
14 one small point of clarification arising from that.

15 Both you and the Chairman were using the
16 expression 'no management'. I would just like to
17 clarify, when you say 'no management', what are you
18 referring to?

19 MR. BISSCHOP: A. I mean no management
20 of the timber resource to achieve the purpose of a
21 continuous predictable supply.

22 MS. BLASTORAH: Thank you.

23 THE CHAIRMAN: No application of any
24 process whatsoever, the forest effectively is just left
25 to --

1 MR. BISSCHOP: Well, we conduct harvest,
2 but it is left to renew itself and we accept what we
3 get.

4 MS. BLASTORAH: Thank you.

5 Q. Mr. Bisschop, did you consider
6 various levels of intensity as alternatives to the
7 undertaking?

8 MR. BISSCHOP: A. No, not as
9 'alternatives to'.

10 Q. And why was that?

11 A. We consider that, and I think I
12 introduced this earlier as looking at alternative
13 methods. Basically we are looking at different mixes
14 of the activities, the four activities; harvest,
15 access, renewal and maintenace, or different mixes of
16 alternative methods of carrying out those activities as
17 alternative methods, and we do that at the management
18 unit level when we plan operations.

19 Q. And can I take it then when you are
20 speaking of intensity that is the context in which you
21 use it?

22 A. That's correct.

23 Q. Thank you. And continuing with the
24 issue of alternatives which could have been considered,
25 I would like to turn to Mr. Duncanson.

1 Forests for Tomorrow asked in their
2 statement of issues why more consideration was not
3 addressed to the expansion of recycling from the
4 analysis of 'alternatives to'.

5 And, Mr. Duncanson, following from Mr.
6 Bisschop's comments, could you elaborate on why the
7 expansion of recycling was not considered as an option?

8 MR. DUNCANSON: A. I'm going to give my
9 presentation basically on my feet, so just bear with me
10 as I set up the mike.

11 MS. BLASTORAH: Mr. Chairman, perhaps as
12 Mr. Duncanson is getting set up, I just refer the Board
13 and the parties to Exhibit 988A and 988, which are the
14 two packages of overheads relating to his presentation.

15 MR. DUNCANSON: Is it possible to get
16 this bank of lights out?

17 THE CHAIRMAN: I think so. I think the
18 lights are in the room somewhere.

19 MS. BLASTORAH: If you just bear with us
20 for a minute, Mr. Chairman, we'll take care of it.

21 MR. DUNCANSON: All of the slides are in
22 the handouts.

23 MS. BLASTORAH: That is Exhibit 988, Mr.
24 Chairman.

25 MR. DUNCANSON: Before I get into the

1 subject of recycling as an alternative and recycling in
2 the Ontario forest industries, I would like to just
3 talk about recycling in general, recycling, the issue.
4 I think we see a lot of this almost nightly on the TV
5 and we'll see it again tonight probably.

6 Recycling is a solution to a growing
7 waste management problem. The landfill sites in most
8 of our major metropolitan centres in North America -
9 Ontario is no exception - are full.

10 In Toronto alone -- I put this breakdown
11 to help you visualize it a bit. Each household
12 discards annually approximately 180 pounds of
13 newspaper, 50 pounds of glass and about 20 pounds of
14 metal containers and tin cans, soft drink containers.

15 As sort of a knee jerk reaction to this
16 problem, governments have established curbside
17 recycling programs, and to date there are close to a
18 thousand metropolitan centres, communities in North
19 America that have a program similar to the blue box
20 program in Ontario; Quebec is one exception, they call
21 theirs the green box.

22 Some governments have adopted recycled
23 content laws. We don't have that in Ontario. Some
24 examples, California, Florida and Connecticut, have all
25 put in mandatory recycled content laws primarily aimed

1 at newspaper and newsprint.

2 MS. BLASTORAH: Q. When you say recycled
3 content laws, could you explain what you mean by that?

4 MR. DUNCANSON: A. For example, the most
5 stringent one, California. The publishers by the year
6 1993 will have to use newsprint -- at least 40 per cent
7 of the requirements will have to be newsprint, which at
8 least 40 per cent is recycled content.

9 Since I've done the slide just last week
10 three very important states to the Ontario industry,
11 being New York, Pennsylvania and Wisconsin, have all
12 passed -- have decided not to go with mandatory
13 recycling laws but have asked the industries involved,
14 particularly the publishers, go on a voluntary
15 recycling, the best efforts possible.

16 THE CHAIRMAN: What was the third state;
17 Wisconsin?

18 MR. DUNCANSON: Pennsylvania and New
19 York. There hasn't been any press on that as yet
20 because it doesn't make headlines.

21 Now, turning to Ontario and how recycling
22 affects the Ontario forest products industry, let's
23 turn to my next slide here. Over the next 15 to 20
24 minutes these are the subjects that I will be going
25 into in more detail, the topics.

1 First of all, we'll look at sort of the
2 balance sheet of waste paper, the supply and demand,
3 and show that waste paper is incapable of supplying the
4 needs of the forest industry in Ontario.

5 The next slide after that will identify
6 the 15 mills, paper mills in Ontario that currently
7 consume waste paper. We'll look at the total waste
8 paper consumption and projections of waste paper
9 consumption in the province, which is 1.4-million
10 metric tonnes by 1991. We'll look at waste paper as a
11 raw material and some of the economics of it, and
12 basically the bottom line there is it is not cheap.

13 We'll also look at the de-inking
14 technology which is also quite expensive and I'll spend
15 a bit of time just briefly going over the components of
16 de-inking technology.

17 I've also identified the waste paper
18 availability in the area of the undertaking, and there
19 is a definite lack of waste paper in northern Ontario.

20 And the bottom, last slide I'll deal with
21 is recycling will not reduce roundwood requirements of
22 the industry.

23 Okay. Recycle, incapable of supplying
24 the needs of the forest industry. As I remember back
25 in Panel 5, we broke the industry down into its major

1 categories; logging, forest industries and paper and
2 allied. The logging industry in Ontario cannot utilize
3 recycled materials. The wood product industry in
4 Ontario cannot use recycled materials, very few of the
5 sawmills buy used lumber, kraft pulp mills cannot
6 utilize waste paper.

7 In total the components making up these
8 three large segments of the industry are probably about
9 90 per cent of the total value added based on the
10 statistics that we presented in Panel 5.

11 MS. BLASTORAH: Q. Mr. Duncanson, can
12 you just remind the Board what kraft pulp is used for?

13 MR. DUNCANSON: A. Kraft pulp is
14 basically the main component for printing and writing
15 papers, which we all have in front of us. It's also
16 the major component for a lot of our paper packaging
17 grades of paper and a big end use as tissue and napkin
18 toweling business.

19 Q. And why can't -- I'm sorry, did I cut
20 you off?

21 A. No.

22 Q. Why can't recycled material be used
23 in kraft pulp process?

24 A. The kraft pulp process is a chemical
25 process - as you've probably found in your experience

10
1 over the last year or so through the mill tour - it's a
2 chemical process using extremely caustic chemicals to
3 break down the wood component into its basic elements.
4 It's there basically to remove the natural glues. It's
5 such a caustic material that putting - introducing
6 recycled fiber for waste paper into the system would
7 actually dissolve the fibers in the existing waste
8 paper. That is one problem.

9 The next problem is the fact that waste
10 paper has ink on it, has a lot of glues, and those
11 contaminants could destroy the chemical reactions in
12 the kraft process.

13 And finally, I guess the bottom line is
14 it could be quite dangerous in some of your recovery
15 boilers and some of the processes used in the kraft
16 process.

17 MR. MARTEL: You can use alternative
18 sources of supply as opposed to, for example, napkins;
19 you could use linen if you wanted to.

20 MR. DUNCANSON: Sure.

21 MS. BLASTORAH: Mr. Chairman, I guess I
22 would just remind -- or Mr. Martel rather, remind the
23 Board - and I'm sure I don't need to do this, it's
24 certainly - the Ministry of Natural Resources has no
25 influence over which napkins people choose to use. I

1 appreciate your point, Mr. Martel.

2 MR. MARTEL: Of listing a whole series of
3 items, wood doesn't have to be used in all of them,
4 that's the only point I'm making. Recycling as an
5 alternative.

6 MS. BLASTORAH: No, I appreciate what you
7 are saying.

8 MR. DUNCANSON: We'll be touching on
9 subjects that come close to that later on.

10 Turning to my next slide here. This is a
11 statistic that is talking about recycling in Ontario.
12 A lot of people don't realize we have quite a large
13 recycling industry already in Ontario. In total we
14 have 15 paper mills that consume waste paper; most of
15 them, that is their major raw material.

16 All of the mills are located in southern
17 Ontario, and this is primarily due to the fact that
18 they are located in the large population centres, hence
19 the larger supplies of waste paper.

20 Table 3 which you have, I call it Table 3
21 (Updated)...

22 MS. BLASTORAH: And that's Exhibit 988A,
23 Mr. Chairman.

24 MR. DUNCANSON: This one may be a little
25 hard to read from the overhead so you probably will

1 want to look directly at your copy.

2 The top half of the table identifies the
3 15 mills and the various companies and the locations of
4 them that make up the existing waste paper consuming
5 industry in Ontario. As you can see, the total
6 capacity to use waste paper is just slightly over a
7 million tonnes, million metric tonnes.

8 The bottom half, the last three
9 companies, mills that are listed here are the mills
10 that are currently under construction. One is in
11 expansion; one is a completely new mill, the expansion
12 being the Frazer; the absolutely brand new Greenfield
13 mill is the Atlantic Packaging mill in Whitby; and the
14 last one is a recent announcement that comes pretty
15 close to this site, and that is the CP Forests mill
16 just over to the west of us here that is putting in a
17 de-inking line at their newsprint mill.

18 In total, by the time these mills come on
19 stream, which are identified by the dates on the chart,
20 there would be -- a total capacity in the Ontario
21 industry will be 1.4-million tonnes. That is an
22 important figure to keep in the back of your head as we
23 go through here.

24 THE CHAIRMAN: But all except for the
25 120,000 metric tonnes will be in the south; is that

1 right?

2 MR. DUNCANSON: That's correct, close to
3 the waste paper supply.

4 The current capacity, as I mentioned, is
5 a million tonnes, 1.4-million by the end of '91. The
6 actual consumption of waste paper in Ontario in the
7 year 1988 was 940,000 tonnes.

8 I've identified the three future capacity
9 additions. Again, the Atlantic Packaging which would
10 be newsprint, and a tissue machine going in in Whitby,
11 CP Forest is putting in a de-inking line which would
12 consume 120,000 tonnes of waste news, and the Fraser
13 mill down in Thorold will be consuming 25,000 tonnes
14 basically of mixed waste paper and they will be largely
15 producing fine papers, printing and writing papers.

16 The next table, Table 4, illustrates
17 really the waste paper consumption in Ontario.

18 THE CHAIRMAN: What is the last line on
19 page 5, on the fifth overhead? A hundred per cent
20 domestic supply would equal 35 per cent recovery rate.
21 Is that a hundred per cent of everything that is
22 available should you re-process?

23 MR. DUNCANSON: That is my lead-on line
24 to my next slide, which is "Table 4 (Updated)". If you
25 can bear with me for a minute, Mr. Chairman, I will

11 1 just identify, walk you through this table first and
 2 then we'll come back to your question about that
 3 hundred per cent domestic supply.

 4 The table here is really broken down into
 5 two parts. What I've done on the top half of it is
 6 identify waste paper consumption. These are all in
 7 Ontario, they are all in metric tonnes, and these are
 8 the actual numbers in 1988 as supplied by the Canadian
 9 Pulp and Paper Association.

10 I've broken - going across from left to
11 right on the table - I've broken down the table in its
12 major components, newsprint, paperboard, which is
13 really paper packaging boards, and all other grades of
14 paper, and then finally we have an all grades total.
15 So from left to right they will total across there.

12 The bottom half of the table shows the
16 total paper and paperboard production in Ontario and I
17 have identified, in that case, the export quantities as
18 well as the import quantities which enables us to come
19 up with the second to bottom line there, how much waste
20 paper or how much paper - not how much waste paper -
21 how much paper we consume in Ontario.

22 And the bottom line, which is the
23 recovery rate, which I will explain in a minute how we
24 come up to that number, but just walking down from the
25

1 top of the table here, the top right-hand corner, total
2 waste paper consumed in Ontario - and this refers back
3 to my previous slide - in 1988 was 940,000 tonnes of
4 all grades, it was newsprint, paperboard and other
5 paper.

6 Of that 940,000 tonnes, 390,000 tonnes
7 was imported, imported into Ontario, which means the
8 United States as well as from other Canadian provinces,
9 but by and large the majority came up from the United
10 States. But that means -- when you subtract 390 from
11 940, that means that the domestic waste paper recovery,
12 how much we recovered ourselves in Ontario in 1988 was
13 550,000 tonnes.

14 To calculate the waste paper recovery
15 rate - this is the number that the industry is starting
16 to quote in the press - because this is the number that
17 will hopefully increase as we divert more waste paper
18 into the landfills, this will be the benchmark number
19 to look for. To come up with the waste paper recovery
20 rate you have to determine the waste paper recovery
21 amount, which is the 550,000 tonnes, and you have to
22 divide that into the domestic paper consumption which
23 is the 2.6-million tonnes down, here and that is how
24 you get 20.5 per cent.

25 Now, I calculated that just roughly. I

1 won't go through each of the individual grades, I will
2 just go down all of the grades. Total paper and
3 paperboard production in Ontario was 4.2-million
4 tonnes, we exported 2.3-million tonnes, we imported
5 750,000 tonnes. That imports again is not just imports
6 from the United States, quite a bit of that is imports
7 from newsprint coming from Quebec to the Toronto market
8 for instance.

9 So you are left with -- you can calculate
10 the actual consumption. And, again, 550,000 divided
11 into 2.6-million is 20.5 per cent.

12 Now, Mr. Chairman, getting back to your
13 point and the last point on slide 5, if we were to get
14 a hundred per cent of our waste paper; in other words,
15 940,000 tonnes, if that was all recovered domestically
16 without having to import any, then our waste paper
17 recovery rate, if you take 940 into 2.6-million, would
18 equate to 35 per cent.

19 So I think it's important to realize that
20 we have the capacity to use quite a bit of waste paper
21 and we import quite large quantities and that actually
22 works out to 40 per cent of the waste paper we use in
23 our own mills is imported.

24 MS. BLASTORAH: Q. Mr. Duncanson, you
25 indicated there potentially if Ontario recovered all of

1 its current needs we'd have a potential 35 per cent
2 recovery rate. How does that compare to the recovery
3 rate in other jurisdictions?

4 MR. DUNCANSON: A. That question came up
5 in a OFAH Interrogatory and I would like to refer to
6 that one, it was part of the handouts, it was No. 32.

7 MS. BLASTORAH: That is on page 10 of the
8 Exhibit No. 986, Mr. Chairman.

9 MR. DUNCANSON: The two jurisdictions
10 that I researched were the United States and the
11 Japanese market, the reason I picked the Japanese
12 market is it is, by far, the most advanced in using
13 waste materials including waste paper.

14 The Japanese paper industry currently has
15 a recovery rate of almost 50 per cent. That level, the
16 50 per cent actually has peaked as indicated by recent
17 statistics. For about the last four years in Japan the
18 recovery rate has peaked at 50 per cent. Now, that is
19 a pretty good benchmark to aim for and the reason why
20 you have difficulty increasing it over the 50 per cent
21 level is for the fact that a lot of paper products are
22 not recyclable; tissue, paper toweling, sanitary
23 papers, printing and writing papers - just look around
24 the room, how many of these papers are going to end up
25 back in the files - books, magazines, a lot of these

1 papers are not recyclable, not put back into the waste
2 system, they are filed, stored away. A very large
3 proportion is burnt.

4 MS. BLASTORAH: No laughing, Mr.
5 Chairman.

6 MR. DUNCANSON: And I could go further,
7 if you want. Kitty litter, bird cages, painting. You
8 know, there are various other uses for waste paper
9 other than sending it back and recycling it.

10 So I looked at the Japanese market. The
11 other market I looked at was the United States. And
12 the United States currently has a recovery rate
13 country-wide of 35 per cent. So we are behind the
14 United States, we are well behind Japan, but if you
15 were to look at that hundred per cent recovery --
16 hundred per cent collection, domestic collection we
17 would be above the United States and a little bit
18 behind Japan.

19 MS. BLASTORAH: Q. And again, Mr.
20 Duncanson, just for clarity, when you say that one
21 hundred per cent recovery rate, I take it you don't
22 mean, given your comments, just mean recovering 100 per
23 cent of paper consumption?

24 MR. DUNCANSON: A. No, it's a hundred per
25 cent -- a hundred per cent of the waste paper

1 collection was domestic.

2 Q. Thank you.

3 A. Just turning to my next slide.

4 Looking at some of the cost data, the breakdown of
5 waste paper. I have come out with the heading that:
6 waste paper as a raw material is not cheap, and I have
7 broken down some of the cost components.

8 Collection costs of waste paper range \$55
9 to \$100 per tonne.

10 Q. And why is there such a wide range in
11 collection costs?

12 A. The basic component of collecting it
13 is transportation and having to -- you know, in the
14 Toronto program, going from household to household,
15 it's up to the City, the trucks.

16 In Toronto where you have got a fairly
17 large population density, it's not nearly as expensive
18 as it is in some of the rural communities. So the \$55
19 level would be more reflective of the cities, and a
20 hundred dollars would be, you know, the rural areas
21 with quite a long distance between stops.

22 You know, it's very capital intensive too
23 because your trucks -- and it's quite labour intensive
24 too, because there's usually a driver plus -- just like
25 a normal garbage run.

1 The next cost component is baling and
2 sorting. This is after the truck arrives at the depot
3 where it's all dumped out into one spot, and the costs
4 there are between \$35 and \$45 dollars per tonne.

5 Q. And what is the significance of those
6 costs?

7 A. Well, when the waste paper is
8 collected - and I think a lot of people visualize
9 newsprint bales -- bundles of newsprint at the
10 curb-side - in collecting it it's all thrown together,
11 there is a tremendous amount of contaminants even, you
12 know, between bottles and cans, but the big sorting
13 problems - and I will get into a little bit of the
14 inking technology in a while - but one of the biggest
15 problems they have with waste paper is the
16 contaminations from plastics. Plastic bags, you know,
17 plastic styrofoam cups from regular garbage streams,
18 but some of the biggest problems are the glues that are
19 used in -- some of the hot melt glues. You get a lot
20 of flyers. Advertisers are now sending more and more
21 junk mail, as we call it, in the newspapers.

22 You know, Wednesdays and Saturdays in
23 Toronto you open up the paper and you get all this
24 coded paper. That has to be separated, you have to
25 have the coded separated from the standard newsprint,

1 and that is very labour intensive and it's very
2 expensive, but it has to be done as we will see a
3 little later.

4 The next major cost --

5 THE CHAIRMAN: Excuse me, Mr. Duncanson.
6 Is the analysis on recycling done on the basis that the
7 material which is recycled is for a use or a similar
8 use for which the original product was intended, or do
9 you put into analyses like this the fact that you might
10 use some of this recycled paper for a totally different
11 purpose, such as providing feed for an EFW or something
12 like that, an energy from waste facility; in other
13 words, utilizing the recovered paper for another
14 purpose such as producing energy?

15 MR. DUNCANSON: Other than making other
16 grades of paper?

17 THE CHAIRMAN: Other than making other
18 paper again, the use for which it was originally
19 intended?

20 MR. DUNCANSON: No. These costs and
21 analysis that I have done on this is just paper going
22 into making other grades of paper.

23 I didn't do an analysis. I guess you
24 could assume that if you were just going to burn it,
25 that you wouldn't have to do too much sorting.

1 MS. BLASTORAH: Mr. Chairman, obviously
2 we didn't go into that type of analysis because it had
3 nothing to do with the undertaking before the Board.

4 The idea here is that this was sort of
5 proposed by some of the parties as an alternative to
6 the undertaking of timber management in order to
7 achieve the purpose of providing wood supply to the
8 forest products industry, and it was in that light that
9 we did the analysis.

10 MR. MARTEL: Can I ask a question then.
11 Did you compare the cost of a tonne of recycled
12 material as opposed to producing a tonne out in the
13 field, in the plant. And by 'in the plant', I mean, do
14 you get the same amount of material? Have you compared
15 cost?

16 MR. DUNCANSON: Well, we identified the
17 costs of wood in the mill process, I remember it quite
18 well because I did it in Panel 5, and I was actually
19 expecting this question.

20 I refer to page 190 of Panel 5 where we
21 have the wood cost component and in 1987, which was the
22 data that we had for that particular panel, that
23 evidence package. The total wood costs in Ontario, the
24 average wood costs for newsprint was \$157 per finished
25 metric tonne. And as we are starting to build up here

1 the third component, the transportation costs is \$20
2 dollars per tonne, and you just put a line there and
3 add up the total.

4 The total cost, f.o.b. the mill, the same
5 as that \$157 for wood at the mill, those components add
6 up to, or average out about \$150 to \$160 per tonne on
7 the same basis because you are basically putting it in
8 the same end of the process.

9 MR. MARTEL: Transportation costs though,
10 is that a cost after you have finished, because -- your
11 collection cost is part of that as well?

12 MR. DUNCANSON: Yes.

13 MR. MARTEL: Included in the costs.

14 MR. DUNCANSON: The baling and sorting,
15 because you have so much contaminants there, is done in
16 a separate area. None of the people accepting waste
17 paper right now will take it unsorted, they are buying
18 it all sorted.

19 So the \$20 is the distance -- \$20 plus is
20 the distance from the collection centre to the
21 individual mill; and, of course, if it was collected
22 and sorted in Toronto and sent further north, the
23 transportation costs would be a little bit higher than
24 the \$20.

25 MR. MARTEL: Thank you.

1 MR. DUNCANSON: Part of our equation
2 though - and this gets back to Mr. Martel's
3 questioning - we have got 150 to \$160 versus 157. You
4 also have to add another factor in when you are
5 comparing deinked waste paper to roundwood or to wood
6 fiber, virgin wood fiber and the fact that de-inking
7 results in a fiber yield loss anywhere between 75 and
8 85 per cent.

9 And the principal reasons for that is
10 that when you -- you know, waste paper has a lot of
11 other materials in it. Ink primarily is -- you would
12 be surprised how heavy the ink actually is, it consists
13 of between 5 and 7 per cent of the weight of the waste
14 paper. That in your de-inking process you are taking
15 the ink out.

16 The other problem is that in de-inking
17 you lose a lot of your shorter fibers that have been
18 held in in the initial paper-making process, will not
19 make it through the second stage, they will not make it
20 through the de-inking process, largely because the
21 de-inking process itself is quite -- you are using a
22 lot of chemicals that will break down a fairly
23 significant portion of the fiber.

24 Now, depending on the end product that
25 you are trying to make with your waste paper, you could

1 lose up to 5 to 10 per cent of your fiber, your wood
2 fiber that is in the paper.

3 MS. BLASTORAH: Q. Mr. Duncanson, just
4 one question on that. I'm not sure whether I heard you
5 correctly, but I believe you said that as a result of
6 de-inking the fiber loss is 75 to 85 per cent, and I
7 see on your overhead you say fiber yield?

8 MR. DUNCANSON: A. Yes.

9 Q. Did I misunderstand you?

10 A. No, I meant - I guess we should have
11 probably left the fiber off the slide. It's waste
12 paper yields 75 to 85 per cent fiber that can be
13 re-used at the paper machine, and that consists of --
14 the two major components of that, of course, are the
15 ink and the fibers that will not make it through
16 because they get broken up.

17 MR. MARTEL: Can I ask one more question.
18 When you are considering your costs of recycling as
19 opposed to getting the wood from the forest, did you
20 make a comparison of what it -- or did you include in
21 your cost what it would cost to produce that much fiber
22 in the woods again; in other words, the cost of
23 regeneration, access and a whole series of other
24 factors? Are they looked at at all?

25 MR. DUNCANSON: You are sort of going in

1 a constant circle here. I have got -- my final slide I
2 get into a little bit of the equivalent weight of
3 roundwood as opposed to a tonne of waste paper but, no,
4 we did not build in the other cost components. That is
5 included, you know, in the wood cost delivered to the
6 mill in our Panel 5 and referring back to the table on
7 page 190.

8 MR. MARTEL: That was included there?

9 MR. DUNCANSON: Yes, that was all
10 included because that was wood delivered f.o.b. the
11 mill in roundwood form, whatever form.

12 I guess a favourite topic with recycling
13 is the fact that, you know, paper can only be recycled
14 four to five times and you will see that in the press
15 quite a bit, and that really relates to what I was
16 saying before, that every time you put a sheet of paper
17 in to take the ink out, you are losing 5 to 10 per cent
18 of your fiber because it just gets broken down further.
19 It's like split hairs, it just keeps breaking down.
20 And estimates are that paper really can only be
21 recycled four to five times.

22 Another element in the costs are these
23 collection costs and some of the yield costs were based
24 on the fact that we were collecting, largely as we are
25 right now, virgin waster paper; i.e., waste paper that

1 has only gone one step, it has been made out of wood
2 and it has been printed on and bang! it's back in
3 again. People call that virgin waste paper already.

4 As we become more efficient in our
5 society of recycling waste there is a very good chance
6 that we are going to start using more and more waster
7 paper. As we go further and further afield in
8 collecting waste paper, your sorting costs go up,
9 you're dealing with a lot more contaminants, you are
10 trying to collect waster paper from non-traditional
11 sources.

12 Right now it's primarily the blue boxes.
13 In Ontario we haven't quite gone to the office yet, we
14 haven't educated ourselves into separating out the
15 paper at the various stages there.

16 All these new elements, as soon as you go
17 further and further afield to collect the waste paper,
18 you get more and more chances of contaminants getting
19 into the paper mix, therefore, your sorting costs go up
20 substantially.

21 MRS. KOVEN: Mr. Duncanson, what does the
22 fiber loss caused by de-inking do to the cost to the
23 industry; is that a straight 25 to 30 per cent?

24 MR. DUNCANSON: Yes, that is a straight
25 25 to 30 per cent and that has to be built into your

1 cost because, of course, your collection costs, your
2 baling costs, your transportation costs are all on the
3 value of that bale of newsprint sitting outside the
4 mill.

5 So you have to in fact, instead of \$150
6 to \$160 f.o.b. the mill, f.o.b. the front end of the
7 paper machine, it's another 15 to 25 per cent.

8 THE CHAIRMAN: Just out of curiosity, how
9 does fax paper break down for recycling?

10 MR. DUNCANSON: It does not.

11 THE CHAIRMAN: Because the ink seems to
12 disappear after a month by itself.

13 MR. DUNCANSON: The fax paper produces --
14 in the recycling process produced a byproduct that the
15 industry likes to refer as stickies. It's like a wad
16 of gum and all of the waste paper purchasers now will
17 not take any fax waste.

18 In our society we are doing it to
19 ourselves, we have a preponderance of preferring papers
20 that cannot be recycled. There is quite a bit of
21 documentation on that. I won't get into it, but fax
22 paper cannot be recycled.

23 Very similarly, telephone directories
24 cannot be recycled because of the hot melt glue. Until
25 they get into some sort of adhesive that can break

1 down, not melted -- when you melt the hot glue it comes
2 back out in the paper machine and you can damage the
3 entire machine.

4 Just two more slides here looking at some
5 of the costs in the -- this is the technology and the
6 de-inking, and we have got some good examples.

7 When I wrote the report there had not
8 been too many de-inked mills physically announced.
9 Since then we've had a - just let me get back to my
10 slides here. Since we put the report together there
11 have been a couple of good examples that we have been
12 able to separate capital costs and what is the sort of
13 optimal size of putting in a de-inking line.

14 The capital costs that we have seen from
15 a couple of examples is about a thousand dollars per
16 tonne of annual capacity. The optimal size of the
17 de-inking line is 80- to 100,000 tonnes, that is an
18 annual basis, and when you multiply the two together
19 the capital costs in dollars is between 80- and a
20 \$100-million.

21 Great Lakes, CP Forests in their
22 announcement of their de-inking line that they will be
23 building in the Thunder Bay mill is going to cost
24 75-million. It will have a capacity to produce about a
25 hundred thousand -- just under a hundred thousand

1 tonnes, but it will consume 120,000 tonnes of waste
2 paper. That is where we get into our loss of fiber
3 yield.

4 On top of the capital costs, most of the
5 mills that are putting in de-inking lines also have to
6 put in special waste treatment facilities, and this is
7 the inks and the fiber that form a sludge that a normal
8 pulp and paper mill does not currently produce. They
9 produce a lot of other bad byproducts, but when you
10 look at putting in de-inking technology, you have got
11 to look at special waste treatment facilities.

12 The other thing that makes -- item that
13 makes de-inking technology expensive - and this is
14 something I think a lot of people don't fully
15 comprehend - is that because your recycled fiber is
16 weaker the fibers are slightly shorter, they have been
17 broken, they have gone through several cooking
18 processes in their life, they are weaker than the fiber
19 that you would normally get in a virgin fiber mill such
20 as we have out at Great Lakes here.

21 Because it's weaker you can't run the new
22 high speed paper machines at the same speed, you have
23 to slow down the mill, and when you slow down the mill
24 you're not getting as much production, your costs
25 remain the same. That is how I get a loss -- that is

1 what I mean by the final statement here, that your
2 weaker recycled fiber qualities equal higher production
3 costs. There is more paper machine downtime.

4 It's a very difficult product to put in
5 and try to get the same sort of production out. And
6 quite often most recycled plants have to add kraft
7 pulp, they have to blend it in to increase the
8 strength.

9 Now, turning to northern Ontario, as far
10 as the supply is concerned, there really is a lack of
11 waste paper in northern Ontario. This is largely
12 attributed to the fact that there is a very small
13 population base, and I estimated that the waste paper
14 supply in northern Ontario is equal to about 25,000
15 tonnes annually. In other words, you know, it's
16 roughly a quarter of what the new de-inking line at or
17 about a fifth of what the new de-inking line at Thunder
18 Bay mill of CP Forests will require annually, and
19 collection costs are considerably higher than southern
20 Ontario and more closer to that \$100 tonne arrangement.

21 People think there is a lot of waste
22 paper up here, but I think it's all in Thunder Bay, as
23 far as I can see here.

24 MS. BLASTORAH: Well, I think I object to
25 the qualification of what you see in this room as

1 waste, but...

2 MR. DUNCANSON: Potential waste.

3 THE CHAIRMAN: He has probably
4 characterized it more accurately than anyone else so
5 far.

6 MR. DUNCANSON: Finally, what this means
7 really I guess, and getting back to the subject at
8 hand, the alternatives, recycling will not in my
9 opinion reduce roundwood requirements.

10 That existing capacity table that I
11 showed you at the beginning, that 1-million tonnes of
12 capacity, it's in southern Ontario, is already based on
13 waste paper. Two of the three additions, the majority
14 of the capacity additions 200,000 tonnes in southern
15 Ontario and that is the Whitby plant and the new
16 Thorold modernization, will consume 200,000 tonnes of
17 waste paper, totally waste paper no roundwood.

18 The new de-inking facility in Thunder Bay
19 that I have referred to, the one that will consume
20 120,000 tonnes of waster paper is the only facility
21 that will affect the amount of roundwood. And I have
22 worked out a formula that is identified there in the
23 second to the bottom line that 1 tonne of waste
24 newsprint is equivalent to 1.57 cubic metres of
25 roundwood. I prefer that method rather than saying 1

1 tonne is equal to 17 trees, as the press likes to put
2 it.

3 So if you take that formula, and you
4 multiply it by the 120,000 tonnes of waste paper that
5 will be used at Thunder Bay, theoretically that is
6 equivalent to 185,000 cubic metres of roundwood, and
7 putting that in context with the current roundwood
8 consumption in the province of 25-million cubic metres,
9 it's pretty small, it's less than one per cent.

10 MS. BLASTORAH: Mr. Chairman, I believe
11 that is the end of Mr. Duncanson's evidence on
12 recycling.

13 THE CHAIRMAN: Yes.

14 MS. BLASTORAH: Now, I appreciate it's
15 about twenty to 5:00, Mr. Chairman. What I would like
16 to suggest is, I have two brief areas to deal with in
17 response to issues raised during scoping, and I think
18 when we are completed that it would be a convenient
19 point to break for the day. I don't think that will
20 take more than about 20 minutes.

21 THE CHAIRMAN: Very well.

22 MS. BLASTORAH: But I would ask the
23 Board's indulgence to finish that chunk together. Just
24 bear with us for a moment, we will get the lights back
25 on.

1 MS. BLASTORAH: Okay.

2 Q. Mr. Bisschop, I would like to come
3 back to you, if I could. In relation to the assumption
4 you outlined earlier that maintenance of access roads
5 will be limited under alternative A, Forests for
6 Tomorrow asked the basis for that assumption. Can you
7 explain that?

8 MR. BISSCHOP: A. Yes. In the statement
9 of evidence, Exhibit 984, on page 27 and 28, we
10 indicated that maintenance of the majority of roads on
11 Crown lands could not be justified on an economic basis
12 without timber management activities.

13 Q. Can you elaborate on that?

14 A. Mr. Chairman, you recall in the
15 evidence of Mr. Oldford in Panel 10, he indicated that
16 the monies spent by the Ministry on the construction
17 and maintenance of access roads was nominal in
18 comparison to industry. I don't recall the exact
19 figures, but he did indicate the relativity of the
20 expenditures by the Ministry versus the industry.

21 You will also recall that in Panel 14 we
22 indicated that most forest access roads are maintained
23 only for the duration of their usefulness for timber
24 management purposes, they are not maintained beyond the
25 usefulness to the industry for the purposes of harvest,

1 renewal, and maintenance activities.

2 Therefore, under alternative A where no
3 timber management activities will be carried out,
4 obviously the industry, which spends most of the money
5 on road maintenance, would not be spending its own
6 money to maintain roads. So, therefore, we concluded
7 that it's reasonable to assume that there will be very
8 limited expenditures of maintenance dollars on the
9 existing access system on Crown lands.

10 Q. Mr. Armson, I would like to turn to
11 you now in relation to one of the other assumptions.
12 In outlining the assumptions earlier Mr. Bisschop
13 indicated that one of those assumptions underlying the
14 analysis of alternatives related to the level of fire
15 protection to be provided.

16 In their statement of issues, the
17 Ministry of the Environment asked for evidence
18 regarding the level of forest fire protection across
19 the area of the undertaking. Are you able to provide
20 any information in relation to that?

21 MR. ARMSON: A. Yes. Mr. Chairman.
22 Exhibit No. 989 is the Forest Fire Management Policy
23 for Ontario. Actually in Panel 11 it was presented on
24 page 496 to 500, a policy that immediately preceded
25 this present one, and they differ in terms of the date.

1 This one you have is the most recent one
2 of 1989. The one that was in Panel 11 on page 496 to
3 500 was the policy that existed at that time.

4 The two policies do not differ in any
5 material way in terms of the question of fire and the
6 manner in which fires are addressed.

7 Q. And could you outline how that policy
8 relates to or indicates, if it does, the current
9 levels?

10 A. Yes. If you would turn - if you
11 have - with Exhibit 989, which is the most recent
12 policy, if you would turn to the top of page 2, there
13 are three pages in the policy, and Section 1.4, which
14 is titled Program Objectives, lists the three
15 objectives.

16 And if I may, Mr. Chairman, would you
17 like me to read those?

18 "First, to prevent personal injury, loss
19 of life and social disruption resulting
20 from forest fire.

21 Second, to minimize the negative impact
22 of fire on public works, private
23 property and the natural resources of
24 Ontario, and;

25 Thirdly, to utilize the

1 natural benefits of fire in achieving
2 Ministry objectives for land and resource
3 management."

4 There is another section that is
5 pertinent, and that begins actually in the bottom of
6 that page 2, and it is Section 2.3 and it is titled
7 Approach. And there is a preliminary statement in line
8 with the responsibilities of the Ministry of Natural
9 Resources.

10 "The fire management objective for the
11 control of wild fires is achieved through
12 a coordinated approach that includes
13 adequate capability, proper preparedness,
14 appropriate deployment and effective
15 action to ensure that."

16 And then there are a series of bullets.
17 I think these are quite important.

18 "Every fire in Ontario receives a
19 response, and each response is governed
20 by-- " and there are three criteria here:
21 " --the predicted behaviour of the fire,
22 the potential impact of the fire on
23 persons, property and values, and the
24 estimated cost of the response."

25 Q. And in that context, Mr. Armson, what

1 do you mean by the word 'response'?

2 A. The 'response' meaning that when a
3 fire is detected it will be monitored -- it will be
4 identified and then monitored.

5 Q. And would that be the response in
6 every case currently?

7 A. That would be, yes. According to the
8 policy, that is what happens.

9 Q. And in some cases would any
10 additional action be taken?

11 A. Yes. There would be then, depending
12 on the criteria here, there could be a suppression or
13 an action taken to suppress the fire.

14 Q. And under alternative A you have
15 assumed that fire suppression activity will be limited
16 to protection of life and property.

17 Can I take it from your comments that
18 current levels of protection would be in excess of
19 that?

20 A. Yes, they would, because as I have
21 indicated as the policy states, values -- natural
22 resource values, and specifically we are speaking here
23 now of timber values, and in alternative A there is no,
24 in effect, no timber value in terms of supplying wood
25 and timber to the industry. There may be other values

1 which may warrant a response.

2 For example, a fire that may be
3 identified as starting in an area of forest - and here
4 is where the predicted fire behaviour may indicate that
5 that would in fact move, given weather conditions,
6 toward private property or habitations and so on -
7 there would be; undoubtedly suppression action would be
8 taken.

9 Q. And under the current situation of
10 timber management, would it ever be the case that a
11 fire in the bush, not of the type you just indicated
12 which is threatening life or property, would it be the
13 case under the current regime a fire in the bush other
14 than that case would receive a more aggressive
15 response, as I believe you put it?

16 A. Under timber management, yes.

17 Q. And would that be the case under
18 alternative A?

19 A. No.

20 Q. And under alternative A you have also
21 assumed that access will be reduced over time as
22 existing roads deteriorated. By you in that context, I
23 mean the written material, not you personally.

24 And new roads are not constructed. Would
25 that lack of access not affect the number of man-caused

1 fire starts which we could expect?

2 A. Yes. Logic would say that as access
3 deteriorated over time there would be less numbers of
4 persons, fishermen, hunters and so on going into the
5 area. This would, however, be something over time
6 rather than would not be, in all likelihood, an
7 immediate reduction.

8 THE CHAIRMAN: What is the policy, Mr.
9 Armson, if you take an area of the province, say within
10 the area of the undertaking; you have no present
11 potential for harvesting, it's an area that is
12 relatively inaccessible, you don't intend to harvest
13 it, you are not aware of any property values or persons
14 who might be in danger within that area, and there is a
15 lightening strike and it burns.

16 Would that not fall under the program
17 'objective to' to minimize the negative impact on the
18 natural resources of Ontario even though you are not
19 going to harvest it?

20 MR. ARMSON: Yes. But you see, if it
21 were under timber management the value of a younger
22 age-class is not in as it's worded now, it's in future
23 contribution to wood supply.

24 And, as the Board will remember, looking
25 at age-class distribution, it may well be that

1 middle-aged, if we can put it that way, or younger
2 stands in fact in terms suppression may have a very
3 high priority for suppression, not because of their
4 wood supply now but what they would yield in terms of
5 wood in the decades to come.

6 THE CHAIRMAN: What about what that
7 particular forest would yield not in terms of timber
8 but in terms of other values, such as wildlife values?

9 MR. ARMSON: Yes, it could be. If there
10 were another value other than a timber value, yes, that
11 would warrant suppression, if the judgment were there,
12 yes.

13 MS. BLASTORAH: Perhaps I could ask Dr.
14 Euler a question arising out of that comment, Mr.
15 Chairman.

16 Q. Doctor, are you able to indicate: At
17 the present time, is it common for fires in the
18 province to be fought solely for, for instance,
19 wildlife management purposes?

20 MR. EULER: A. No, it's not common, it
21 would be very rare to do that.

22 Q. Thank you. Mr. Armson, going back --

23 THE CHAIRMAN: Just going back to that
24 for a minute. If that is the case, then how do you
25 reconcile that with the statement or purpose of

1 minimizing the negative impact on the natural resources
2 of Ontario which surely have to include more than just
3 timber?

4 MS. BLASTORAH: Q. Dr. Euler, perhaps I
5 can ask you to comment on why -- in relation to your
6 last response, why do you not fight fires for that
7 purpose?

8 MR. EULER: A. Because most of the time
9 the net benefit of a fire on wildlife is very positive,
10 in most cases. Now, there may be some exception
11 somewhere, but in most cases it's very positive and we
12 would rather have the fire there from a wildlife
13 habitat standpoint than not have it there.

14 So sometimes the conflict might be -- the
15 real conflict is between sorting out the values of
16 protecting it for wood supply versus letting it burn
17 for wildlife habitat supply.

18 THE CHAIRMAN: That is a determination of
19 whether the impact is negative or positive.

20 MR. EULER: Exactly. You are constantly
21 balancing these things off to make the appropriate
22 decision in the appropriate way.

23 THE CHAIRMAN: So essentially what you
24 are saying is, if you don't have persons that are in
25 danger, property that is in danger you are not

1 concerned about the timber value and you are left with
2 every other value out there, wildlife and other values,
3 it's unlikely in your view that letting the fire go
4 would negatively impact the other values?

5 MR. EULER: That is correct, Mr.
6 Chairman.

7 MS. BLASTORAH: Q. Mr. Armson, coming
8 back to the issue of man-caused fires which we were
9 discussing a moment ago, I believe you indicated in
10 response to my question that the number of man-caused
11 fires in the bush would be expected to reduce in time
12 as roads deteriorated.

13 Would the results of those, of any
14 remaining fires, be any different in your opinion under
15 alternative A than under the current system?

16 MR. ARMSON: A. Yes, because if in fact
17 under alternative A the amount of suppression were very
18 significantly reduced then the inevitable fact is that
19 for fires that are there, will burn uncontrolled and,
20 therefore, will be much larger.

21 The history of suppression is that by
22 suppression you in fact reduce the average size of
23 fires. This is why you do have suppression. The size
24 of those fires could be very large, I think the Board
25 is aware.

1 Q. In your opinion, how would that
2 impact on the resulting forest under alternative A?

3 A. It would result in a different
4 pattern over time, again, I would stress this, in which
5 the areas that would burn; the individual fire areas
6 would become larger and in fact over a period of many
7 decades, if not a century or more, probably talking
8 that order of magnitude, the forest, particularly the
9 boreal region would come to resemble perhaps much
10 closer the forest that we in fact found when we first
11 came to it. In fact we were looking there largely at
12 the results of fire -- well, uncontrolled fire whether
13 they would be lightening or caused by humans.

14 Q. Would there be an increase in the
15 area burned overall?

16 A. Yes, one would expect an overall
17 increase in the total area burned.

18 Q. And would that increase be
19 significant, in your opinion?

20 A. I think that the general indication
21 would be yes; but, again, I would stress that that
22 would be over a considerable period of time that this
23 would take place.

24 THE CHAIRMAN: Mr. Armson, would it be
25 correct that you wouldn't want to apply fire

1 suppression without timber management because you would
2 change the class structure radically if you didn't?

3 In other words, if you, as you just
4 indicated, let it burn, don't do anything, the forest
5 would likely return to what it was when we first came
6 or inherited it; but if you suppress the fires but
7 didn't change the class structure by regeneration,
8 silviculture, et cetera, you'll end up with a very
9 different forest?

10 MR. ARMSON: Exactly.

11 MS. BLASTORAH: Mr. Chairman, I think
12 those are my questions in relation to that particular
13 issue, and it's almost exactly five o'clock. I would
14 suggest we might want to stop at this point because we
15 would be entering into a completely new area.

16 THE CHAIRMAN: Okay. Just before we go,
17 where did we end up this afternoon, if I could raise
18 the question? Mr. Freidin was going to go away and
19 maybe talk to us again.

20 MS. BLASTORAH: Mr. Chairman, I have just
21 consulted with Mr. Freidin and he advises that we will
22 attempt to deal with the issue raised by the Board
23 tomorrow morning, and if we are unable to deal with it
24 at that time, certainly we'll deal with it before
25 cross-examination begins Tuesday morning.

1 THE CHAIRMAN: Okay. I take it tomorrow
2 you are going to complete the direct?

3 MS. BLASTORAH: Yes.

4 THE CHAIRMAN: And I don't think we'll
5 have a ruling in order to prepare the parties for cross
6 tomorrow, unless Mr. Edwards wishes to cross-examine in
7 the absence of a ruling.

8 MR. EDWARDS: Cross-examining in a
9 vacuum, Mr. Chairman. I would prefer to launch on my
10 cross-examination. I will be half an hour or less, so
11 I really would appreciate the opportunity.

12 THE CHAIRMAN: And the ruling doesn't
13 matter to you; does it, in terms of your client's
14 interest?

15 MR. EDWARDS: No, it won't impact on my
16 cross-examination.

17 MS. BLASTORAH: I anticipate that we'll
18 be able to finish the evidence-in-chief to allow Mr.
19 Edwards his half hour, although we do obviously still
20 have the bulk of the evidence to go.

21 THE CHAIRMAN: Okay. Eight o'clock
22 tomorrow?

23 MR. FREIDIN: Mr. Chairman, I assume even
24 if the panel is under cross-examination, for the
25 purposes of discussing and getting instructions on the

1 legal issue, there would be no problem with me
2 discussing the matter with Mr. Bisschop or anyone else?

3 THE CHAIRMAN: Not with us.

4 MR. FREIDIN: Thank you.

5 MS. BLASTORAH: Thank you, Mr. Chairman.

6 ---Whereupon the hearing adjourned at 5:00 p.m., to be
7 reconvened on Wednesday, January 11th, 1990,
commencing at 8:00 a.m.

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